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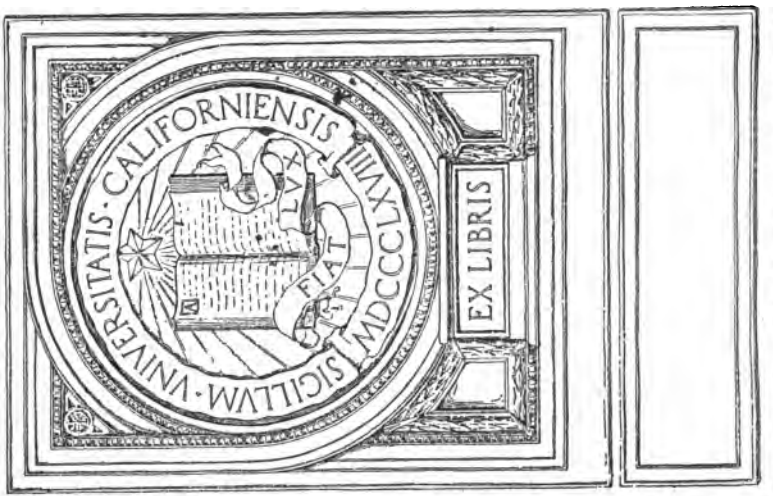

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PLATE I.—SKULLS FROM SANTO DOMINGO, SHOWING ARTIFICIALLY FLATTENED FOREHEADS.

(*From Twenty-Fifth Annual Report, Bureau of American Ethnology.*)

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CAUSES AND CURES

OF

CRIME

BY

THOMAS SPEED MOSBY

Member of the American Bar; Former Pardon Attorney of the State of Missouri; Member American Institute of Criminal Law and Criminology. Author of "Capital Punishment," "Youthful Criminals," "Alcoholism and Crime," "Mothers of Bad Boys," and Other Essays

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PREFACE.

The cost of crime in the United States now amounts to one-third the total cost of the government, and the burden is yearly increasing. Crime is seven times more prevalent in this country now, in proportion to population, than it was sixty years ago. According to Professor Kellicott of Goucher College, one in every thirty persons in the United States is now defective or dependent, or both defective and dependent. These facts constitute the author's apology for this attempt to engage the public attention at this time, in this manner, and upon this subject.

When Blackstone wrote his commentaries upon the common law of England, he gave as one of his reasons for so doing a desire to epitomize, in a manner, and to popularize, an intricate but important branch of learning, and at the same time he expressed the belief that every gentleman ought to be familiar with the common law. For a much greater reason, at this day, every man and woman who feels an interest in civilization, who prefers racial improvement to racial

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deterioration and degeneracy, and who would foster the upward growth of society rather than witness its disintegration, must aspire to a degree of familiarity with the comparatively new science of criminology.

In the attempt to treat in a popular style so abstrusely technical a subject, ramifying, as it does, through all the mazes of sociological, biological, physiological and psychological science, the author has essayed a difficult task, and is by no means oblivious of his own limitations in that attempt. He who ventures into this field must, like Bacon, take all knowledge for his province. Nothing which in anywise affects human life is foreign to the student of criminology.

In his arrangement of the book the author has but observed the subdivisions which naturally suggest themselves, and into which the subject logically falls, i. e., etiology, prophylaxis and therapeutics. The reader will understand, of course, that nothing like a complete treatment of the subject can be comprised in so small a volume. First, an attempt is made to adumbrate the primal factors in crime causation, under the respective headings of Cosmic, Social and Individual factors of crime. Having thus gained an idea of the principal causes which operate as inducements to crime, we are then, in the logical order, to consider in what manner crime is to be prevented. Various preventative studies are presented in the chapters on Eugenics, Asexualization, Education and Social

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Amelioration. Finally, the reader is invited to consider the cures of crime, as suggested in the last three chapters of the volume—The Theory of Punishment, Indeterminate Sentence and Parole, and The New Penology.

Throughout the volume, the author has sought to discover and portray the present status of scientific investigation upon the various topics treated, and has quoted freely from the leading authorities, sometimes with approval, sometimes for the purpose of recording a firm dissent, but always with profound respect for the great minds who have preceded him in this field of important research.

The suppression of crime is not at all a legal question. It is rather a problem for physicians and economists. This, it is believed, will be fairly evident to all who peruse these pages. We shall find, too, that the habits of life and thought which make for health of mind and body likewise militate against crime; that physical, social and moral diseases abide in the same diathesis; that there is a physical basis of morals, as well as a spiritual basis of life; and that, in the study of normal and adnormal man, we can no more consider him as an animal without a soul than as a purely mental phenomenon without a physiological basis.

But the volume, perhaps, were best left to speak for itself. At least, it may interest, if it fail to instruct; and if it shall in anywise tend to promote the advancement of learning by stimulating a public interest in the all-important problems

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herein presented and discussed, the author's task will not have been essayed in vain.

For courtesies extended and valuable assistance rendered the author begs to acknowledge his indebtedness to Col. William Young, Chief of Police, Mr. Samuel Allender, Chief of Detectives, and Mr. J. M. Shea, Bertillon Superintendent, of the St. Louis Police Department; and to Hon. William C. Reynolds, Police Commissioner, and Mr. William C. Gordon, Bertillon Operator, of the Kansas City Police Department. Both the St. Louis and the Kansas City police departments at this time are singularly free from the abuses which have often prevailed in the police departments of many American cities.

THOMAS SPEED MOSBY.

Jefferson City, Missouri,
August 1, 1913.

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CAUSES AND CURES OF CRIME.

PART I.
ETIOLOGY.

CHAPTER I.

Cosmic Factors of Crime.

Only in recent years has the cosmic factor been seriously considered among the predisposing causes of crime, and while the data compiled by the assiduous labors of a number of eminent scientists do not fully determine the precise extent of such influence, yet they are sufficient to indicate its existence, and, in some degree, its nature. The mental, moral and physical conditions of man are always affected by conditions of seasons, climate and configuration of the earth's surface, as shown by Lacassagne, Garraud, Bernard and Oettingen, among others. In some of the goitrous districts

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of Europe cretinism is known to have diminished after drainage of the marshes, thus indicating a telluric influence upon this species of degeneracy.

Combe[1] has observed that children born in summer are taller than those born in winter. Dexter[2] says that weather conditions which are physically energizing and exhilarating are accompanied by an unusual number of excesses in deportment, while the opposite meteorological conditions show the reverse effects. Dr. G. Stanley Hall[3] thinks that the effects of climate have been insufficiently studied, and adds that these effects are sometimes difficult to separate from those of work and rest. "Low temperatures," says he, "involve kinetic energy to maintain heat, and larger quantities of food must be provided. Its indirect influence in affecting mode of life, food, etc., must be of itself great, while the earlier age of puberty in most warm climates would suggest earlier completion of growth. No doubt there is an optimum temperature most favorable to the highest human development, and also a limit of variation beyond which retardation is caused. The studies of the effects of temperature upon the growth of lower animal forms are interesting here."

[1] Körperlänge und Wachstum der Volkschulkinder.
[2] Psychology in the School Room.
[3] Psychology of Adolescence, vol. 1, p. 33.

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MacDonald[4] takes note of the fact that animals of the same species, or related ones, are fiercer in the torrid than in the less warm regions of America; that lions in the Atlas Mountains are much less formidable than those in the desert; and that cattle have been known during the warm season, and especially at the approach of a storm, to be taken with an attack of fury and rush against persons and trees until the storm bursts and the rains calm them. Dr. Buckle has, in his "History of Civilization," shown with great clearness the influence of the cosmic phenomena upon the races of men. These influences are obviously indicated by the comparatively low types of civilization which are usually found in the more inhospitable portions of the globe. Upon the whole it would seem that no school of criminologists can afford to ignore the important influences which climatic variations exert upon social as well as biological conditions.

The accompanying diagrams and their explanations, illustrating the monthly fluctuations of crime, are from MacDonald. From Diagram A it will be seen that crime is at a minimum in June, there being 6,490 indictable offenses. It is at the maximum in October (8,014), and decreases but

[4] Man and Abnormal Man.

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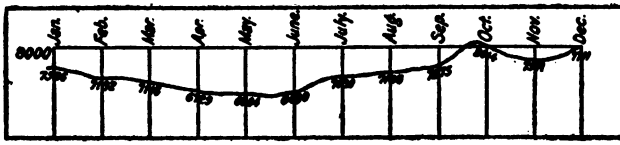

Diagram A.—Crimes committed (all indictable offenses).

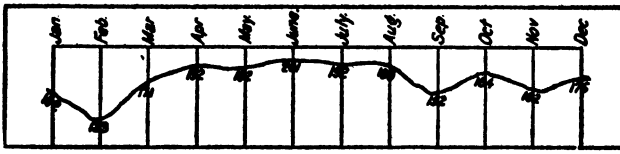

Diagram B.—Crimes of violence against the person.

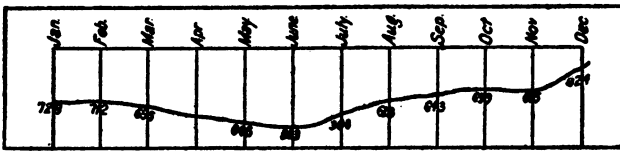

Diagram C.—Crimes against property with violence.

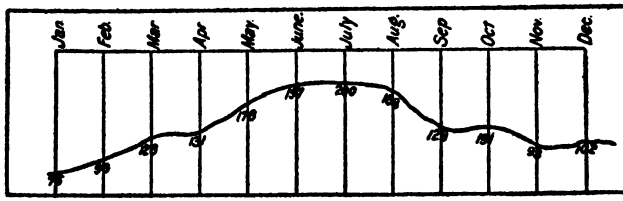

Diagram D.—Attempts at suicide.

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little in November, December and January. While the fluctuations of crimes against property determine those of crime generally, crimes against the person follow in an opposite course, as Diagram B shows; that is, such crimes are highest in the spring and summer, while reaching their minimum in the winter months. In crimes against property with violence, Diagram C, the maximum is in December and the minimum in June, varying inversely with the length of the day. Diagram D shows the maximum of suicidal attempts in hot weather.

Statistics very clearly show that crimes against the person are proportionately most numerous in warm climates, while in the cooler regions crimes against property are most frequent.[5] In the warmer climates of Italy and Spain we find the maximum of murders in Europe, while the cooler climes of England, Scotland and Holland supply the fewest murders in proportion to population. Prof. Enrico Ferri has demonstrated that in France the greatest number of crimes against the person are committed in the summer season, while the maximum of crimes against property is reached in winter. Discussing the influence of thermometric and barometric changes on the quality of

[5] Lettingwell: Influence of Seasons Upon Conduct.

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human conduct Dr. G. Frank Lydston, in his very interesting work on "Diseases of Society and Degeneracy" (p. 23) states that hot weather seems to have an effect chiefly in increasing crimes of impulse, and that neuropathic persons, especially, find great difficulty in adjusting themselves to changes of climatic environment. In such persons the mental equilibrium, already unstable, is easily destroyed, and in this respect hot weather, making the nerve centers hyperesthetic, acts much in the same way as alcohol. "The tonic effect of cold weather in maintaining the nervous and mental equilibrium of neuropaths, and thus inhibiting crimes of impulse," says Dr. Lydston, "is obvious. The physiologic turmoil in the sexual system ushered in by spring is well known. Poets have sung of it, and rapists have been hanged for it. It bears a relation not only to sexual crimes but to all crimes of impulse, such as murder and suicide." We know that in the United States crimes against the person are unduly high in southern latitudes. It is clearly proven that the maximum of suicides, murders and rapes is always reached in early summer, whereas the minimum is reached in December or January. Therefore it appears that Byron stated a scientific fact, since borne out by statistics, when he said in "The Giaour" that

"The cold in clime are cold in blood."

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Dr. Rink claims to have discovered certain Eskimo languages which supply no word for "quarrel." Gibbon, in Chapter 65 of his history, has observed: "The Arctic tribes, alone among the sons of men, are ignorant of war and unconscious of human blood; a happy ignorance, if reason and virtue were the guardians of their peace." But their pacific nature is not due to their reason, and their virtue is rather an effect of the Arctic temperature. Possibly the Laplander should not more be praised for his harmlessness than some of the Italians should be blamed for their extraordinary aptitude in the use of the stiletto. Both are governed, in some measure, by cosmical influences, and while the criminal anthropologist may attribute this homicidal or non-homicidal tendency to individual characteristics, we cannot doubt that the individual nature is somewhat affected by climatic influences acting in conjunction with certain biological conditions. History records the fact that within three generations the Vandals who settled in northern Africa were transformed from a fierce and hardy soldiery into a race of luxuriant weaklings. But, for all that, the Carthagenians under Hannibal were not an effeminate people. It must likewise be borne in mind that the same climate which nur-

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tured Cyrus the Great witnessed the fall of Persia, and that the skies under which the later Roman emperors basked in luxuriant indolence were the same sunny skies which smiled upon the Roman legions when their victorious eagles awed the world.

Climatic conditions may operate through both the social and the individual factors of crime. Thus a man may endure in the mountains or upon the open plains a temperature of 90° or 95° without serious danger to his nervous organism, whereas if confined to the heart of a city of three or four millions the results of the same temperature upon the same nervous and physical organism may become serious. This is partly illustrated by the fact that, although the maximum number of suicides is reached in the summer season, yet the number is greater in the large centers of population than it is in the rural districts. For example, in New York City the suicides are about 150 to the million of population, while in the rural districts the number is less than 100 to the million. It should not be forgotten, however, that in the centers of population other factors aside from those of climate and temperature are operative in a high degree.

It is noticeable that our great "waves of crime"

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usually occur in seasons of extraordinary heat and humidity, and that the center of the "wave" is also the great center of population, where social and individual factors of crime converge with greatest intensity upon the given point. The nerve-tension is always more extreme in the large cities and there, also, are the social vices most numerous. Precipitate upon these conditions a condition of unusual heat, and an epidemic of crimes against the person may be expected to follow.

In the United States the "mad dog season" and the "crime wave" usually occur simultaneously, but dogs do not always go mad if given relief at the proper time, nor will normal men commit crimes of violence in normal circumstances and under normal conditions. When Boerhave died, the great physician left behind him this laconic bit of advice to seekers after health: "Keep your head cool and your feet warm." From the viewpoint of criminal anthropology the temperature of the feet may be regarded as relatively unimportant, to be sure; but, a "cool head" is highly desirable, not only in the figurative sense but in the sense of physical actuality.

The natural relation of heat to crimes of violence is more readily grasped than is the relation of cold to crimes against property. There would

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seem to be no apparent reason why man should be more dishonest in cold than in hot weather, or in cool than in warm regions, but nevertheless the criminal records seem to indicate this to be the fact.[6] This may be due to the fact that the means of livelihood are more readily obtainable in warm weather and in warm climates; and the earning capacity is greatly curtailed, among the majority of men, in the cooler seasons and in the colder regions of the globe. The overwhelming majority of thefts are committed by men of unsettled pursuits and no established occupation; and it is evident that they who, from whatever cause, cannot produce for themselves, will most naturally attempt to take the produce of others; just as the inhabitants of the barren highlands of Scotland for so many centuries lived by theft because there was no other way for them to live, and just as that other northern race, the Vikings, for the same reasons lived by pillage upon their neighbors of the South.

Mountain wilds and Arcadian fastnesses which are supposed to inspire the highest reach of song, are no longer known merely as the harmless and idyllic rendezvous of poets and the haunt of dreams; for they are the haunts of brigandage as

[6] Lombroso: Crime, Its Causes and Remedies, pt. 1, ch. 1.

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well. Lombroso[7] noted that during a period of fifty-four years the minimum, 20 per cent, of crimes against the person occurred in the level country; that 33 per cent occurred in the hilly country, and that a maximum occurred in mountainous districts. This he ascribed to the active and hardy nature of mountaineers, and to the facility afforded for ambuscades. But the turbulency of the mountainous districts of Kentucky and Tennessee will not be ascribed solely to the active and hardy nature of the population. I have no doubt that the condition is also partly due to the facilities afforded for escape. For this, among other reasons, outlawry is not indigenous to the open plains and is less difficult to irradicate there than in mountainous regions.

Being unable to accept the doctrine of economic determinism, the author must deny that the human being is conditioned solely by material influences, cosmic or otherwise; although, in the light of the investigations made by scientific minds of the highest order, it would be unwise as well as unsafe to discard those influences from any rational inquiry into the causes of crime. In all such inquiries, however, care should be used to avoid the recognition of isolated and merely coincidental

[7] Crime Politique, ch. 4.

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phenomena as proof of the ultimate fact. Man cannot be said to exist as a cosmic organism alone, unaffected by social influences or ethnic peculiarities which, in some measure, govern his moral conduct. But, knowing how and when and approximately the extent to which cosmic influences may be expected to operate in the formation of human character, we may be thereby enabled to more effectively supply the desiderata peculiar to the environment.

Weather, the soil, the climate of a country, as well as its topography, exert far too great an influence upon individual and racial character to be ignored in any successful attempt at social analysis, but they are not the dominating influence in the development of either individual or national character. If such influences were paramount then we should expect to find a persistency of criminal type prevailing with a uniformity affected solely by the variations of cosmical phenomena, and this is a proposition which, manifestly, cannot be apodeictically asserted in the present state of scientific investigation. There is one civilization at the site of Babylon and another at Berlin, and human nature in its essential elements has changed but little, if any, since Hammurabi wrote his code; but, although the climate has altered

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little, the vices and virtues which in those days pervaded the valley of the Tigris and Euphrates were not precisely what they are today. Germany has passed from savagery to civilization of the highest type within the period of authentic history, but there has been no marked change of climate. To the student of history, many similar incidents will readily occur. But such conditions, although they may tend to minimize, do not eliminate the theory of cosmical factors in crime-causation and in racial growth.

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CHAPTER II.

Social Factors of Crime.

The environment of the individual is made up of the cosmical and social conditions which surround him. Criminologists have therefore, for convenience in the investigation and treatment of the subject, grouped in three principal categories the causes which operate to induce crime, viz.: the cosmic, social and the individual causes; of which the social causes are by far the most numerous, comprising, as they undoubtedly do, many of the primal inducements which lie back of very many of those factors which appear to dwell within the criminal's own individuality. The French school of criminology teach that most crime arises from diseased social conditions and that, consequently, the remedy is to be sought in better social conditions. No doubt much of the degeneracy which afflicts civilization does originate in the maladjust-

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PLATE II.—A VINDICATION OF THE FINGER-PRINT.
Photo indicates same man, but finger-prints show three different individuals.

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ments of society; but, as Ferri[1] observes, social conditions alone do not explain crime. In their "Introduction to the Study of Society," Small and Vincent observe (p. 270): "While the truth that has just been stated—namely, that diseased and abnormal individuals produce pathological social conditions—is of fundamental significance, another important truth must not be overlooked. It is that abnormal social arrangements and functions react upon individuals, offering opportunities for personal degeneration and unsocial conduct if not actually making them necessary. This reciprocal interrelation between men and institutions must be kept in view by all rational reformers. Insistence upon only one-half of this twofold truth is a source of much confused thought and fruitless effort. As in the case of all social growth there is constant modification of structure in adjustment to new or changed functions, so pathological conditions are slowly eliminated as a result of improved individual and collective thought, feeling, and conduct."

The influences of social conditions upon the life of the individual are so various and complex that an exact analysis of their precise nature and extent is impossible; but, for the purposes of this

[1] Crim. Soc. p. 55.

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inquiry, those conditions may be divided into three general classifications, namely: political, economic and moral.

Most obvious among crime-breeding political conditions is that state of political apathy or civic stagnation wherein multitudes of the better classes become neglectful of their civic obligations. When right-minded persons cease to exert their influence in the public life of the community the worst elements of citizenship rapidly gain control, and the public offices are prostituted to the purposes of personal aggrandizement. It is then that men lose respect for their public officials, and disrespect of the official functions and the laws which they represent is both an early and an inevitable result. These conditions, when allowed to remain unchecked, ultimately spread through all ranks of society, until the community is honey-combed with the corruption that flowers in its public representatives. Such a state of society not only offers no incentive to honesty, but it places a positive premium upon vice.

Out of such unclean political conditions others flow as from a fountain. Opinions which engender a contempt for the rights of property naturally arise. The spectacle afforded by men grown rich through privileges filched from the

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community does not inspire a lofty regard for the paramount sacredness of property rights in general, and those who do not think correctly become easy converts to the doctrine of Rob Roy, that

> "They should take who have the power
> And they should keep who can."

Improper administration of the criminal laws by courts and prosecuting officials is often a cause of crime. There are two classes of prosecuting officers who are more dangerous to society than any of the so-called professional criminals. One class is composed of those who, from corruption or inefficiency, are lax in the performance of their duties. The other class is made up of those who are bent upon "making a record." Such men drive many to lives of crime by the severity of punishment imposed for trivial and first offenses. Many a young man has been ruined and made an enemy to society, when he could have been saved by a little judicious leniency exercised in the right way and at the right time. One notorious criminal told me in his death-cell that this was especially true of his own case, and that he knew it to be true of many of his associates in crime. So earnest was he in this belief that he asked me to remember it as the declaration of a dying man, and to transmit it to others who may be interested in the adminis-

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tration of the criminal laws. A few hours later this man died upon the gallows—guilty of the crime for which he died, but none the less the victim of another's mistake.

Closely allied with the prosecutor's office is the police department. I have been told by more than one criminal of national notoriety and experience that there is, in many great cities of the United States, a limited partnership between certain of the criminal classes and the police departments. Police investigations in a number of cities have at various times corroborated these statements. The whole police department, it is true, is seldom or never so involved, and frequently the heads of the departments have no knowledge of the true relations subsisting between some of their subordinates and the criminal classes. But this relation is not always that of bribe-giver and bribe-taker. It often happens that the officer on the force simply wants to "make good." To do so he must needs procure information with regard to certain criminal operations. There are always criminals who can give a clew to an officer. But they will not do so unless given to understand that in the ordinary course of events they will not be themselves molested. Thus arises a secret understanding between the crook and the police. The

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crook must do detective work which he alone can do, as the price of his own immunity. He has no regard for the law, and becomes a worse citizen than before, while the other crook, who is denied similar immunity and protection, feels a kind of double injury and becomes more of an enemy to society than he was before. The police officer, in the course of time, becomes thoroughly demoralized, and in the outcome the state, the officer and the criminal all suffer from this truce with crime.

The first case of the so-called "white slavery" to reach the public attention in the United States was due to a connivance of police officers in the city of St. Louis, and subsequent investigations have shown similar conditions to exist elsewhere. The first case was developed in 1902 by Joseph W. Folk, then Circuit Attorney of St. Louis, and afterwards elected Governor of the State of Missouri. Folk at that time discovered houses in St. Louis into which many young girls had been decoyed by promises of employment. In these houses the male patron purchased brass checks of the cashier, and these checks were received by the girls, who in turn delivered them to their employer each morning and received "credit" on the books. These girls never saw any money at all. Occasionally one made her escape, but the police

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were always promptly notified and she was as promptly returned to her keeper. When the responsibility was properly located this revolting condition was soon destroyed. Abuses of this kind can never exist without police protection.

"The law's delay" is not so great a factor in the encouragement of crime as is commonly supposed. Frequently the delay of trials and the suspension of sentences but contribute to the terrors of the law. It is sometimes true that the longer an indictment is held over the head of an accused person, the more harrowing the ordeal becomes to him, whereas the immediate trial and determination of a case may result in the infliction of a penalty before either the criminal or the public have had time to realize it. But, aside from all this, it conclusively appears that the certainty of the punishment is the only thing about punishment that is of any avail at all. The delay of punishment amounts to little, provided it be certain; and undue severity, where it fails to provoke popular discontent, is at least certain to confirm any anti-social tendency to which the criminal may have been previously disposed, or else breed new hatred of the laws. As Seneca[2] says: "The time that precedes punishment is the severest part of it."

[2] De Beneficiis, II, 5.

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Back of the question of law enforcement and antecedent thereto is the question of law-making. In some parts of the United States the citizen is governed by more than sixteen thousand separate and distinct statutes, supplemented, modified and construed by a myriad of court decisions—and the citizen is presumed to know them all. It is doubtful if even Rome, before the time of Justinian, was more plagued and vexed with laws. "Corruption abounding in the commonwealth, the commonwealth abounded in laws," says Tacitus.[3] If the people of the United States have suffered a greater degree of failure in dealing with crime than have other peoples upon the same plane of civilization, a considerable measure of that failure must be ascribed to a disposition to invoke the legislative panacea upon all occasions. Almost every public and private relation has become the subject of legislation. A body of law so voluminous and complex as to be wholly beyond the knowledge of the average man must inevitably lose the sympathy and respect of the public, and law enforcement will become more difficult with the increase in the number and complexity of the statutes. To have all grievances met by law is as bad in effect as to have them all to be adjusted by

[3] An., Bk. III, p. 160.

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non-interference. The one is the extreme of socialism; the other, the extreme of liberalism. Intelligent legislation, moreover, cannot be formulated without regard to the needs and wishes of the people as well as to abstract principles. Constant says: "In order that the institutions of a people may be stable, they must keep themselves to the level of the people's ideas." Solon did not claim for his constitution that it was the best that human wisdom could devise; but, he said that it was the best that his people would accept. When Colbert, the great minister of Louis XIV, summoned the merchants and manufacturers of France about him and asked them what should be done by the government to aid commerce, they replied: "Let it alone;" and Benjamin Franklin declared that to be one of the wisest political axioms ever uttered by man. Where there is too much law making, there will also be much law breaking, for the average man can never be legislated into a state of prosperity, temporal or spiritual, nor will he willingly yield obedience to laws for which he cares nothing and which he cannot understand. While upon this subject it may be worthy of note that Lombroso[4] and Brunialti[5] have both

[4] Crime, etc., p. 329.

[5] La Legge e la Liberta.

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recognized the efficacy of the referendum as the means of acquainting the people with affairs of government, the former stating: "It may be considered as the most powerful instrument for the education of a free people, because it forces them to study the laws submitted to them, and, by making them feel their whole responsibility, gives them a consciousness of the part they have in the political life of the country."

Exhibitions of public cruelty will engender in the community a callousness toward human suffering and certainly tend to destroy in the public mind the feeling that a human life is a sacred thing. We look with less seriousness upon the taking of life when we become accustomed to seeing human beings publicly put to death. Thus, in the days of the duel, men did not hesitate to give their own lives, or take the lives of their fellow creatures, for so trifling a matter as the snapping of a finger in one's face. It has been demonstrated in our day that in those States where are most legal executions in proportion to population there are most lynchings, and in the States where the greatest number of legal executions and lynchings occur, there, also, occur the greatest number of the so-called capital crimes.

War, revolution, riot, or any condition which

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suspends the civil relation and tends to loose the social bond, will always tend to convert men to savagery. The fiendish acts of cruelty committed upon women and children, and even upon dumb animals, in the border States during the civil war in the United States, can scarcely be believed, even when detailed by creditable eye-witnesses. A captain in the volunteer army during our late war with Spain told me that twenty-one of his men, who had borne excellent characters at home, committed a most horrible assault upon a pure country girl. Quite a number of the soldiers of that war, who were not able to quickly adjust themselves to normal conditions after their discharge, have since served sentences in various penitentiaries. I have investigated a number of these cases, and in each instance have found the criminal nature due chiefly to the military service mentioned. The same rapid moral deterioration is noticeable in every great social disturbance, numerous instances of which are afforded by our great labor difficulties.

Aubry[6] declares that war is a neurosis, a contagious, homicidal insanity. Lombroso[7] notes that war always increases the number of crimes.

[6] La Contagion du Meutre.

[7] Crime, etc., p. 56.

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According to Lydston military service renders a great many unfit for honest industry, for one or more of the following reasons: (1) impaired constitution from legitimate diseases incidental to army life; (2) crippling from venereal diseases prevalent in armies; (3) viciousness and depravity arising from the fact that men congregated together tend to sink to the level of the lowest rather than rise to that of the highest; (4) crippling from wounds; (5) breaking up all habits of industry; (6) mental inertia from lack of brain work in the service; (7) being cared for by army machinery to the exclusion of the principle of self reliance; (8) alcoholism contracted in the army; (9) loss of wage earning positions that cannot be regained on quitting the service. The warlike spirit is sometimes called the aggressive principle in man. So it is. The *animus furandi* is also an aggressive principle, and, as lawyers know, no theft is complete without it. Why should we admire that in man which leads him to fight, and denounce that which impels him to steal? In the one case he makes an assault upon his neighbor's body; in the other, upon his property. As to this, Sparta showed a degree of consistency which modern humbugs would do well to imitate. Of course, war is an aggressive principle, and that is an ad-

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ditional reason why society should guard against it. If it were not aggressive it would be innocuous. The life of the soldier is a strenuous one, to be sure; and so is that of the highwayman, the burglar and the pirate. They are all active men. Indeed, as Dr. MacDonald says, there is philological evidence to show that in Sanskrit the word for crime is the word for action. But this active principle asserts itself in deeds of rapine and violence only among savages. Civilized man has outgrown it. Herbert Spencer shows that the warlike peoples are the most vicious. The martial spirit is the worst feature of human nature, because the most brutish. Martial law is no law at all, because the civil relations are suspended, the bands of society are dissolved, the social contract is nullified, the military arm is paramount, brute force reigns supreme and civilization halts. There is, strictly speaking, nothing good in war. As Shakespeare said in Henry V., "There are few die well that die in battle." Benjamin Franklin was literally correct when he wrote:[8] "There never was a good war or a bad peace." All war is homicide, robbery and arson, and is morally excusable, if at all, only upon the part of those who wage it in self defense. It is significant that all the great

[8] Letter to Quincy, Sept. 11, 1773.

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atavisms of society, both in Europe and in Asia, have been immediately preceded by wars of conquest, in ancient as well as in mediæval times. The so-called right of conquest is, as stated by Montesquieu, but "An unhappy power which leaves the conqueror under a heavy obligation to repair the injuries done to humanity." One may readily understand why a statesman with the capacity of William E. Gladstone viewed with apprehension the growth of "that terrible military spirit."[9]

Many, if not all, of the political conditions above discussed, find their ultimate origin in economic conditions.

Among economic conditions having a bearing upon crime, the relative influences of city and rural life upon the individual character have afforded a subject for profound consideration by many scientific minds. Mr. H. M. Bois, in his book "Prisoners and Paupers," concludes that ninety per cent of our criminals come from the cities. Levasseur says that in France the cities produce twice as many criminals as the country. Mr. W. D. Morrison is authority for the statement that London furnishes one-third of the indictable offenses of England and Wales though

[9] Tollemache: Conversations With Gladstone.

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supplying less than one-fifth of the population. "On the whole," says Prof. Gabriel Tarde, the distinguished French penologist, "the prolonged effect of large cities upon criminality is manifested, it seems to us, in the slow substitution, not exactly of guile for violence, but of greedy, crafty, and voluptuous violence for vindictive and brutal violence. Through them, through the fever of pleasures which they stimulate, every intense civilization, unless care be taken, will inevitably run to a conflict of appetites, mortal enemies of one another."[10] It is doubtless true that urban life is more conducive to crime than is rural life; I have found it to be so in Missouri; but I am by no means convinced that the difference in criminality is as great as is commonly stated. Criminal statistics are usually made up from convictions, and there are two very good reasons why convictions, regardless of the percentage of criminality in the population, are more numerous in the city than in the country. The first reason is to be found in the efficiency of the police departments and detective forces of the great cities, and the almost total absence of such facilities in many of the rural districts. The second reason lies in the fact that in a great many of the rural districts the prose-

[10] Penal Philosophy, p. 359.

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cuting officer is merely a beginner in the law, whereas in the large cities he is usually one of the most capable members of the bar. I speak, of course, with especial reference to the United States, having no personal knowledge of the conditions actually existing in foreign countries.

Another fact that swells the criminal statistics of the great cities is this: In the great centers of population it is always comparatively easy to "make a case" against a friendless individual, whether he be guilty or not, and a man who has been convicted once is very likely to be convicted again, on account of his "police record."

But, none the less, life in a great city does afford many inducements to crime which are unknown in the rural districts. Of such are the immoral theatres, low saloons, gambling dives, houses of ill-fame, publication in the daily press of the minute details of crimes and criminal trials, the facilities afforded for forming evil associations, and other like factors of crime. In great centers of population, where newspapers of large circulation are numerous, the suggestive power of the press can hardly be over-estimated. This is especially true with reference to the minds of neuropathic persons and people in the adolescent stage. I knew one case in which it clearly appeared that

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a woman's character was destroyed as a direct effect of reading the details of the trial of Harry K. Thaw in New York. MacDonald[11] says: "The publication in the newspapers of criminal details and photographs is a positive evil to society on account of the law of imitation; and in addition it makes the criminal proud of his record, and develops the morbid curiosity of the people, and it is especially the mentally and morally weak who are affected." Lombroso[12] observes that "Civilization by favoring the creation and dissemination of newspapers, which are always a chronicle of vices and crimes, and often are nothing else, has furnished a new cause inciting criminals to emulation and imitation." Aubry[13] comments upon the effects which criminal details produce upon those whose nervous systems are unstable. "They may naturally have no tendency to crime at all," says he, "but continual reading about it may easily excite them and prove a dangerous incentive to many bad deeds which would otherwise have been unthought of. It is most desirable that the details of criminal reports should be judiciously cut down before

[11] Criminology, p. 272.
[12] Crime, etc., p. 54.
[13] Transactions Congress of Criminal Anthropology, Geneva, 1902.

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publication. A woman of Geneva killed her four children, as she said, 'as a woman did which was in the newspapers.' A lad of fifteen stole from a patron; when the money was spent he stabbed a child in the abdomen and afterwards cut its throat, saying, 'I have often read novels and in one of them I found a description of a scene similar to this which I have executed.' " And then Aubry continues in almost the exact language of MacDonald: "The publication in the newspapers of criminal details and photographs is an effective evil to society, on account of the law of imitation. In addition, it makes the criminal proud of his record and excites the morbid curiosity of the people, affecting especially the mentality of the weak." In this connection the psychology of man in the mass forms an interesting study. The morals of a mob are lower than the morals of the average individual constituting the mob.[14] As M. Tarde said at the congress of anthropology in 1892, "The crowd is never frontal and rarely occipital; it is mainly spinal. It always contains something childish, puerile, quite feminine." According to Hans Gross,[15] Tarde, Garnier and Diekterew, all showed at the same congress how

[14] Fournial: Psychologie des Foules.
[15] Criminal Psychology, p. 416.

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frequently the mob is excited to all possible excesses by lunatics and drunkards. Tarde ascribed these phenomena to his "law of imitation." This psychic contagion is also recognized by Weber and by Baer.[16] The moral resisting power of the crowd is, in some circumstances, less than that of the individual. Bertillon says: "There is a kind of violent and morbid tendency that moves us to reproduce the feelings and movements which we see around us. Many causes contribute to this: youth, femininity, and above all (as Sarcey says) the mutual contact of sensient persons, which gives added strength to the natural impressions that each one has by himself. The air is filled with the dominant opinion and transmits it like a contagion." Operating, as it does, directly upon these crowded populations the newspaper's power for good or evil is greater by far than many publishers suppose, and large communities experience the effects of this influence without realizing the extent of its power. What is here said of newspapers is likewise true of the motion-picture and the drama.

It has been a matter of debate among criminologists as to whether there is the same degree of culpability attaching to mob offenders as to indi-

[16] Die Gefangnisse.

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vidual offenders. Scipio Sighele, in his book on "Collective Crimes" (by which he means mob crimes), contends that the individual who acts as part of a mob should not be held to the same degree of accountability as when acting alone. I believe Sighele to be correct in his contention that the person who commits crime under the influence of the exciting causes of mob action should be treated more leniently, because the actors are involved in a complex of external suggestion rather than driven to crime by their own wills; for such criminals do not premeditate crime, but are simply drawn into the whirlpool, often against their own wills, and almost always with their own wills unconcerned, by the strong forces of imitation.

The crowding together of large numbers in tenement districts, where the conditions both morally and physically are unwholesome, limits greatly the opportunities for character development, and consequently may be reckoned either mediately or immediately among the crime producing conditions. I knew a case of rape which came from a room in which nine persons of both sexes were living. Such conditions are fruitful of rape and incest, and it may be accounted a remarkable circumstance if any good at all be found to flow from such environments.

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Many criminal types are ascribed to the conditions of extreme poverty and excessive wealth, and these conditions are therefore classified as among the economic conditions which are comprised within the social factors of crime. It is not true, however, that poverty in and of itself is a decisive factor. If that were true the countries having the least wealth would show the greatest ratio of thefts, and the smallest proportion would occur in the rich countries. But statistics show that there is less of stealing in proportion to population in poverty-stricken Ireland than there is in prosperous England. Other comparatively poor countries, like Hungary and Spain, also show a lower ratio of theft than do some of the richer nations.

It is noticeable, however, that crimes against property rights are most numerous where abject poverty and inordinate wealth exist side by side or in close proximity. As Fornasari says, this favors the tendency toward crime upon the one hand, and on the other furnishes better opportunities for it. One may reconcile himself to poverty where all are poor, but it seems harder to endure privation in the sight of opulence, especially unearned or ill-gotten wealth. Wherever poverty operates as an inducement to crime it usually op-

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erates as a secondary influence; that is to say, men do not usually steal to relieve hunger—only about five per cent of thefts are for food and clothing—but the hard struggle engendered by poverty may sometimes disorganize the family, destroy the home, induce the recklessness which is born of despair, and thus indirectly set in motion the agencies that result in crimes of various kinds. When men are thrown suddenly out of employment because of business depression or some great catastrophe, the moral equilibrium is lost and there is a general tendency to crime. In France, Allard, Villerme, Mercie and Fregier have shown that unjust taxation, and especially the taxation of food stuffs, have operated to increase the tendency of crime; while Ferri thinks that free trade and "immunity from taxation for the minimum necessary to existence," would tend to diminish crime.[17] That the monopoly of natural resources, resulting as it does in a denial of equal rights to labor and to exclusively enjoy the gains of individual industry, operates to promote industrial serfdom and consequent deterioration, is the hypothesis of Henry George.[18]

As to the criminal influence of great wealth

[17] See Ferri: Crim. Soc., pp. 114, et seq.

[18] Progress and Poverty.

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upon its possessors, statistics do not serve us. We know that nearly all convicts are very poor. Personally I have never seen one who was not poor—even in the "banker's row." Few of them possess anything at all, what little they once had having usually been taken by their lawyers for their defense. But this does not prove that the possession of great wealth may not be a crime-breeder. Whenever wealth begets idleness and dissipation, vice and crime are sure to follow; and we know this as certainly as we know that a rifle ball, passing through the heart, will produce death—no mortuary statistics being required to prove the latter proposition. Idleness and dissipation, however, are the proximate cause, in any event, and one need not be rich in order to enjoy a monopoly of both. When persons of wealth fall into vicious habits they do so for the same general reasons that impel poor persons to the same conduct; they do not entertain a proper sense of their responsibility to society—or, in other words, they have not been properly educated.

The lack of proper education is, indeed, a most prolific cause of crime. This is not an allusion to the baneful effects of illiteracy alone. Illiteracy is of itself so obviously brutalizing that its dangers need not be pointed out. The man who cannot

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read or write is necessarily a menace to civilization, and only in the proportion that he has been overcome and his influence minimized has civilization advanced. But when we have progressed beyond the state of illiteracy we still find men who, though statistically enrolled among the educated classes, are not educated. They have been instructed, but not educated. No completely educated man will become a criminal. A proper education will not only develop the intellect, but will quicken the moral impulses and sensibilities. A person so educated will, in the phrase of Marcus Aurelius, "understand the natural beauty of a good action and the deformity of an ill one."

The third and last of the conditions into which we have divided the social factors of crime, in its broader sense really includes them all. No condition of society can be entirely rational and just that is in conflict with the moral law. "Of all the dispositions and habits which lead to political prosperity," said Washington in his Farewell Address, "religion and morality are indispensable supports. . . . And let us with caution indulge the supposition that morality can be maintained without religion." Whether we consider the evils of intemperance, greed, prostitution and divorce, or crimes of dishonesty, or acts done in malice or

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in a heat of passion, whatever the particular vice we discover and distinguish as a cause of human misery and social disaster, we have, forever at hand, not only an antidote but a panacea in the precepts of religion. No man can follow the precepts of the Christian religion and be a criminal. Man, as a social being, requires something beyond the coercive authority of penal statutes to impress upon him that obedience to moral obligation so necessary to the existence of all righteous government. Positive law cannot extend to the correction of the private vices of individuals. The law cannot make good citizens. It can only regulate their conduct after another power has brought them into being. Taking human nature as it is, we know that the natural love of right is not so strong in the heart of man, and the fear of penal statutes is not so great, that he will always do right merely because it is right or avoid wrong simply because his wrongful act may fall within the inhibitions of a statute. There must be a moral force behind the law. There must be a love of law and a spirit of civic responsibility among the people, or the whole contents of the statute book will be "as sounding brass or a tinkling cymbal." There is but one agency, generally speaking, that can enforce perfect obedience to moral

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obligation; and that agency is a deep sense of religion, permeating the mind with the idea of accountability to a Supreme Being for every thought and deed. The church is thus the great enemy of every anti-social tendency. It is the mightiest moral force in the world today. Irreligious tendencies are usually followed by moral disintegration; for, when the standards of righteousness become confused or lost, the anti-social tendencies thrive with less resistance, and crime is the inevitable result. It may be safely asserted, then, that the lack of religion, for men attempting to live in a state of organized society, is a cause of crime. There can be no social conscience without an individual conscience, and the individual conscience will forever find in the spirit of true religion its strongest support. Lombroso himself, though no friend of religion in general, and especially as it exists on the continent of Europe, attests the good that has been accomplished by some forms of religion.

The author yields to none in his admiration of the genius and scholarship of Cesare Lombroso, whose gigantic intellect shed perpetual glory upon the science which it founded; but when, in his "Crime, Its Causes and Remedies"—a book distinguished for acuteness of judgment and pro-

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fundity of learning—he says that, "It is time to free ourselves from the atavistic tendency, which has survived unnoticed even in the most scientific observer, to regard religion as a universal panacea for crime," strict candor must impel the response that the great Italian has failed to grasp the true nature of religion or to recall its most signal historic achievements.

What, it may be asked, would be the condition of the government of the United States today if all American citizens were insensible to the religious meaning of an oath? What, in such event, would become of the machinery of our courts? Lombroso quotes Sergi[19] in the following words: "The true morality is instinctive; the moral sense is like the feeling of pity; if it does not already exist, neither religious nor educative influence, nor any precept, will be able to create it." This is as much as to say that a man who is not good can never become so, or that uncivilized peoples must remain forever in a state of barbarism. Such a doctrine is contrary to all human experience. It would make civilization a chimera and reformation an impossibility.

After the downfall of the Western Empire, the ministers of the new religion, by their

[19] Tribuna Guidiziaria.

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erudition, their habits of peace and their industry, greatly accelerated the formation of those civic institutions which constitute the substructure of modern European governments. Professor Roscher[20] states that the church has passed through almost every stage of development in advance of the state. Thomas Jefferson was clearly wrong when he wrote[21] that: "In every country and in every age the priest has been hostile to liberty." It was Archbishop Anselm who led the opposition to the tyranny of William Rufus and extorted the first charter from Henry I., and it was Cardinal Langton who led the barons against King John and gave Magna Charta to the world.

Whether founding seminaries to wreathe with new laurels the brow of learning, or building hospitals to succor the distressed; whether piercing the heavens with cathedral spires, or winning in trackless wilds among heathen tribes the crown of martyrdom, in every age and in every land the priests of the Christian religion have been the wonder and admiration of mankind. In all the hoary annals of time they are without parallel or counterpart. From the catacombs of imperial

[20] Polit. Econ., Vol. 2, p. 228.
[21] Letter to Spafford, March 17th, 1814.

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Rome they ascended to the palace of the Caesars, and for the mailed fist of Roman militarism which then ruled the world, they substituted the mild and salutary Gospel of the Prince of Peace. The fierce hordes of northern barbarians which beat down the Roman legions and swept the Roman senator from his curule chair, halted at the door of the sanctuary and bowed at last before the wand of the Crozier and the magic of the Cross. Through the troubled centuries to come it was the monks and priests of Rome who carried the torch of learning into the dark places and caused Christian cities to spring from the brambles, bogs and fens of savage wilds. As with the rod of Moses, they smote the rock of the wilderness, and there gushed forth the fountains of civilization; they touched the desert, and it sprang into fullness of life.

What power but the church could have established the "Truce of God," which, during an age of bloodshed, restored peace to Europe at such frequent intervals as to make perpetual war no longer possible? The charge that the mediæval clergy were supporters of despotism is refuted by Hallam in his "History of the Middle Ages," and the same learned author remarks the impetus given by Christianity to the formation of civic in-

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stitutions. M. Guizot expresses the same views in his "History of Civilization in Europe."

"Let us," in the words of Montesquieu,[22] "set before our eyes, on the one hand, the continual massacres of the kings and generals of the Greeks and Romans; and on the other the destruction of people and cities by those famous conquerors, Timour Bey and Jenghiz Khan, who ravaged Asia; and we shall see that we owe to Christianity in government a certain political law and in war a certain law of nations, benefits which human nature can never sufficienty acknowledge. . . . The principles of Christianity deeply engraved on the heart would be infinitely more powerful than the false honor of monarchies, than the humane virtue of republics, or the servile fear of despotic states."

The question of divorce is a socio-religious question and is one that strikes directly at the heart of society. Sexual crimes are the specific crimes of advanced civilization, according to Lombroso, Penta, Viazzi and Krafft-Ebing; and Lombroso singles out the remedy of divorce as the most powerful preventive of such crimes. This conclusion appears to be based upon Ferri's statistics, which show that in Germany and France

[22] Esprit des Lois.

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convictions for adultery and other sexual crimes, within a given period, were most numerous in districts where divorce did not exist. But the same statistics would as easily support an argument in favor of "free love," and the non-existence of marriage. The crime of adultery presupposes the existence of marriage. Abolish the marital relation and you preclude all possibility of violating it, of course; but such a course would suggest the experiment of the ancient Greek State in which there was no money coined save from iron which had first been rendered worthless—and this in order to prevent the people from loving money. Plato urging a community of wives and theoretical state paternity was not so inconsistent; but his premises were false. Divorce is not a panacea for sexual crimes, nor is it even a mild corrective. At least, it has not been so with us. Assuredly, divorce is sufficiently prevalent in the United States. With us it amounts almost to a national scandal. But are sexual crimes less numerous here? The Chicago Vice Commission, in its report upon the social evil in Chicago (published in 1911), after an exhaustive consideration of the subject, records itself of the opinion that "divorce, to a large extent, is a contributory factor to sexual vice." Says August Drähms:[23] "Divorce and

[23] The Criminal, p. 285.

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crime go hand in hand, and juvenile crime is sheltered beneath its wings." Ireland, the least criminal nation of Europe, has the fewest divorces.

After referring to the manner in which Tacitus contrasted the chastity of the German women with the conjugal infidelity of the Roman matrons, Gibbon, in the ninth chapter of volume one of his history, observes: "Although the progress of civilization has undoubtedly contributed to assuage the fiercer passions of human nature, it seems to have been less favorable to the virtue of chastity, whose most dangerous enemy is the softness of the mind. The refinements of life corrupt while they polish the intercourse of the sexes. The gross appetite of love becomes most dangerous when it is elevated, or, rather, indeed, disguised, by sentimental passion. The elegance of dress, of motion and of manners, gives a lustre to beauty and inflames the senses through the imagination. Luxurious entertainments, midnight dances and licentious spectacles, present at once temptation and opportunity to female frailty."

Indeed, throughout all history, licentiousness has as certainly attended upon luxury as luxury has followed upon the heels of wealth. When the tide of materialistic ideas sets in upon a nation chastity is the first of the virtues to be set

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adrift. Will divorce stem the tide? There is reason to believe exactly the contrary. Fifty per cent of the children in our reform schools are the children of divorced parents. Fully seventy-five per cent of juvenile criminals have had bad home environment, and a very large proportion of adult criminals may trace their downfall to the ruined home.

So long as we cannot guarantee infallibility in matrimonial selection the state must and will, under certain limitations and restrictions, recognize divorce. It may minimize, but not prohibit. However, the root of the evil lies not in separation, but in the causes which induce separation. Unhappy marriages are due to one or both of two general causes, viz.: (1) hasty and inconsiderate marriage, and (2) improper conduct after marriage. Recognizing, no doubt, the dangers following from hasty marriages, Pope Innocent III, in the year 1215, established the publication of the marriage banns, and the marriage banns was afterwards recognized by the laws of England, in the statutes of George II. and George III., as well as in the laws of some other nations. But the three weeks' notice thus provided is not sufficient in point of time, is not of universal application, and is not of sufficiently wide publicity. However,

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an extension of the idea involved in the banns would prevent many ill-judged marriages, and the subject is now receiving the consideration of many legislative bodies in the United States. Impediments to marriage and the subject of matrimonial selection will be further discussed in Chapter IV., of this volume, under the title "Eugenics." But after all has been said upon the subject of marriage and divorce and sexual crime, we are brought to the conclusion that, after all, the home is the infallible standard and criterion of a nation's life. Influences that destroy the home, whatever they may be, will as certainly destroy alike the individual and the national character.

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CHAPTER III.

Individual Factors of Crime.

Seldom or never do the various causes of crime act independently of each other, but the one ever present and continuing factor is the individual factor. Cosmic and social influences must unite in their operation upon an individual character in order to produce a criminal, and those influences are relatively of greater or less importance according to the strength or weakness of the moral and physical character of the individual. Hence it is that the thoughtful student of crime and its prevention is forced to conclude with Lydston, that, "the nearer we get to the marrow of criminality, the more closely it approximates pathology." This subject was discussed at the Thirty-Eighth Annual Convention of the American Academy of Medicine, which convened at Minneapolis, June 13, 1913. It was shown that positive results had

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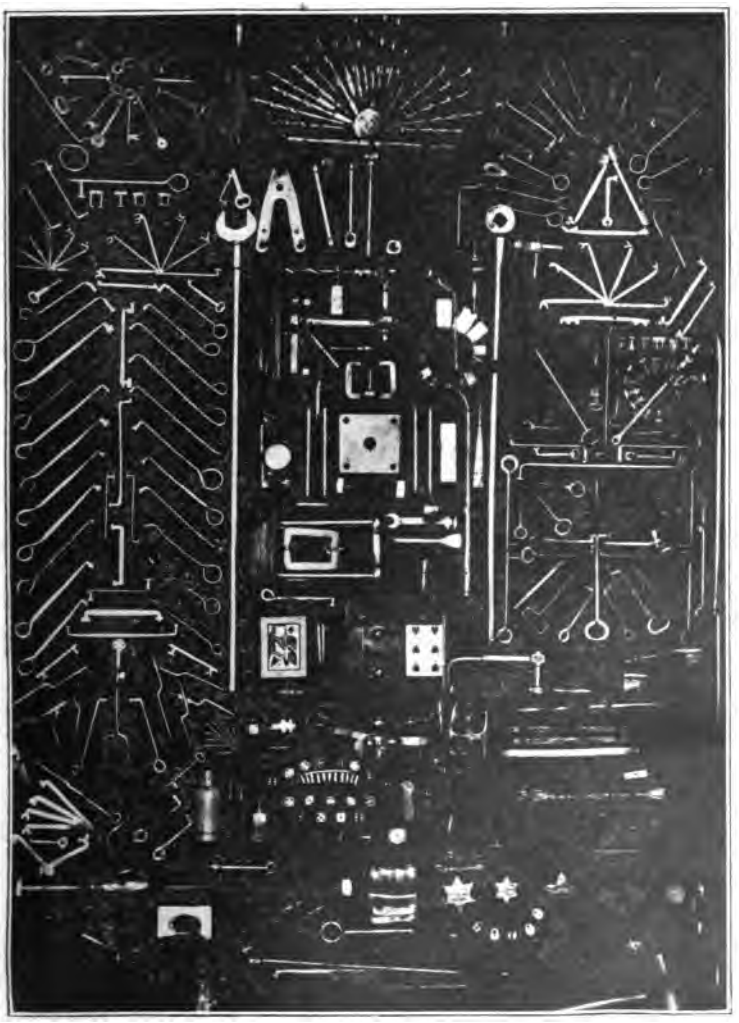

PLATE III.—A "KIT" OF BURGLAR'S TOOLS.
This is said to be the most complete collection in existence.

(Courtesy St. Louis Police Department.)

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been obtained by the medical and surgical treatment of criminals.

The frequent recurrence of the phenomena of atavism and heredity has led many eminent investigators to withhold their concurrence from the view that crime is a disease. This is true of some Europeans, where the existence of a criminal type is best established. Arthur MacDonald[1] is also of the same opinion; but MacDonald's conclusions are based, as he says, upon reports from the various penitentiaries in the United States, indicating that an overwhelming proportion of the convicts therein confined are in an excellent state of health. However, these reports emanate necessarily from prison wardens and boards whose official relation is wholly casual and incidental to a career of politics, and a great number of whom have shown no serious disposition to investigate or to understand either the mental or the physical condition of the inmates. But, although atavism, strictly speaking, is not itself a disease, none will deny that the conditions which induce reversion to savagery may sometimes be pathologic in their nature. Moreover the savage nature, under proper therapeutic influences, is susceptible of amelioration. This is confessedly and con-

[1] Man and Abnormal Man.

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spicuously true of the American Indian, among whom cultural influences work almost as rapidly and effectively as they do among products of a higher civilization. And, singularly enough, the more savage tribes yield as rapidly to civilizing influences as do the relatively less dangerous. In a brief sojourn among the Apaches and Comanches in 1901, I observed that the Apaches, then the most savage of our Indian tribes, and the last to try conclusions with the American army, little more than a decade after their last savage foray against the white settlements of the Southwest, were acquiring the habits of industry and peaceful husbandry more rapidly than were a large number of the more peaceably disposed and relatively harmless Comanches. If proper educational methods can thus transform the character of a warlike and savage tribe in the brief space of ten or twenty years, may we not expect as favorable results when curative methods are applied to the atavistic criminal? If savagery yields to treatment, may not atavism do so likewise? That it does so yield is beyond question, although it may offer stubborn resistance and in some cases may admit of no amelioration. Conceding the biological principle of reversion may not the reversion be to a diseased type? If that be true, then the prev-

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alence of atavism not only does not exclude the theory of disease, but may often tend to support it. Unfortunately, in these cases of atavism we have no means of determining the exact period to which the subject of reversion is to be assigned. We cannot tell whether the given atavistic type is a reversion of the fifth or the tenth, or the twentieth ancestor, or to the period of neolithic or paleolithic man. That can be arrived at but approximately, and by comparison of what is known of the ancient types with the atavistic type before us.

One trait which the criminal has in common with the savage is his apparently instinctive passion for gambling, and this fact is seized upon as one of the cardinal proofs of criminal atavism. There can be no doubt as to the antiquity of gambling, and especially of the use of dice. The dice discovered in the ruins of Thebes are not essentially different from the dice in use today, and this, no doubt, is the oldest of the gambling games. Some have ascribed the origin of dice to Greece, where the game was found as early as the time of Psalmedes, who has been accredited with the invention of the game. Dice were known at the court of Croesus, and Heredotus attributed their origin to the pleasure-loving Lydians. In America,

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however, the game is indigenous to the soil and was the aboriginal game of chance. Dice have been found in the prehistoric ruins of New Mexico, Arizona and Utah, and the game is positively known to have been familiar to at least one hundred thirty distinct tribes of Indians. An old Maricopa legend ascribed to it a mythological origin, and the game was sacred to the war god of the Zuni.[2]

The ancient Persian monarchs, according to Plutarch, were wont to amuse themselves with dice, and occasionally staked their slaves and eunuchs upon the issue of the game. Writing of the "Manners of the Germans," Tacitus, the great authority upon the primitive Teutonic tribes, remarks: "In the character of a German there is nothing so remarkable as his passion for play. Without the excuse of liquor (strange to say), in their cool and sober moments, they have recourse to dice as to a serious and regular business, with the most desperate spirit committing their whole substance to chance, and when they have lost their all, putting their liberty and even their persons upon the last hazard of the die." St. Ambrose, in one of his most interesting tracts, relates the same circumstance with regard to the Huns,

[2] See 24th Annual Report, Bureau of American Ethnology.

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(though, unlike Tacitus, he expresses no astonishment at their sobriety during the performance), and adds: "They live without laws, yet obey the laws of dice."

The antiquity of the gambling instinct and its prevalence in modern times, tend to impel the conclusion that if the passion for gambling is to be regarded as a savage instinct, modern civilization is but veneered savagery. Certainly, this is one trait displayed by civilized man in common with the most barbarous peoples, for it is the one distinguishing characteristic of all savages. But curative agencies can remove it, even among savages (as the history of the American Indian shows), and even this characteristic may be classified as a neurosis, common alike to civilized and barbaric peoples. It must be confessed that in the search for the criminal type more research has been exerted than has been employed in the search for the normal type. Moreover, the psychical and physiological characteristics of criminals and normals are in some instances found to be the same. Whether or not this be due to the fact that these normals are themselves potential criminals, the fact is none the less disconcerting to the statistician. Criminologists, of course, meet the situation with the observation that non-

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criminal types bearing the stigmata of degeneracy may not be expected to remain permanently aloof from crime. And this is probably true; but it does not lessen the difficulty of correct classification.

Among the physical characteristics of criminals are the following: aural anomalies, disproportionate length of arms, defective chest development, weak heart, prehensile toes, left-handedness, atavistic dental anomalies, prognathic jaw, facial asymmetry, cranial stigmata—such as retreating frontal bone, large supra-orbital bosses and small cranial capacity—retreating chin, pallor of skin, small and restless deep set eyes, paucity of beard in the men and masculinity in the woman, dark hair (predominant in the proportion of 49 to 33 per cent), deformity of hands—large and short in murderers and long and narrow in thieves—sexual anomalies, and prominence of the zygoma. Laycock, Lombroso, Frigerio, Frère, and Siglas are among those who have noted the anomalous ears of criminals. Aural anomalies and deformities are especially frequent among the insane, idiotic and epileptic. The Darwinian tubercle is often found among the insane and criminal types.

It is well known that cardiac disease is frequent

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among the insane and the same condition among criminals has been noted by Flesch, Hagen, Mendal, D'Astros and Penta. Penta[3] has likewise noticed the presence of prehensile toes among criminals. The eyes of criminals have been studied by Lydston, Lombroso and Vidocq, among others. Marro places stress upon the prominence of the zygoma. Sexual anomalies are discovered by Ellis and Ottolenghi. Lacassagne finds 600 out of 800 criminals with large finger reach.

Among the psychical peculiarities of criminals are vanity, emotional instability, inferior intelligence, improvidence, malingering, tattooing, impatience, obtundity of the moral sense, the use of slang, vengeance, defective senses, relative insensibility to pain, meteoric sensibility, superstition, lack of self control, impulsiveness, want of foresight, precocity and tendency to relapse.

Vanity, bordering upon the exaggerated ego of insanity, is the characteristic of all instinctive criminals. Their emotional instability is attested by Havelock Ellis, Krafft-Ebing, Lombroso, Lydston, MacDonald and Debrück, among others. The criminal's use of slang is one of his most peculiar psychical traits. All criminologists have noticed this. MacDonald, in his "Criminology,"

[3] Arch. di Psichiatria, 1888.

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publishes a vocabulary of criminal slang. Brand Whitlock, in his "Turn of the Balance," puts into the mouths of some of his characters this peculiar vocabulary of crime. In the criminal lexicon there is a striking richness of synonyms. MacDonald found that criminals have seventeen different words to indicate guards; seven for pocket, and nine for sodomy.

Touch is obtuse among 44 per cent of criminals as against 29 per cent of normals. Visual acuteness is remarked by Lombroso but a very high percentage of color-blindness is noted by Bono, Holmgren, Biliakow and Schmitz. Biliakow found a large proportion of criminals suffering from defective hearing in the left ear.

G. E. Dawson, Fellow in Clark University, made a careful examination of 60 delinquent children of the average age of 16 years, choosing the following classes of offenders: Thieves, incendiaries, assaulters, sexual offenders and general incorrigibles. He summarizes their points of inferiority to normals in the following particulars:

1. There was a tendency to shorter statures, lighter weight, diminished strength in the muscles of the hands, and greater sensitiveness to pain.

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NORMAL AND DEGENERATE PALATES.

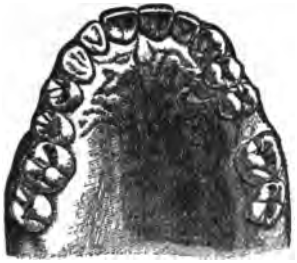

Fig. 1.—Normal upper jaw.

Fig. 2.—Abnormal upper jaw. "V" shaped.

Fig. 3.—Abnormal upper jaw. Saddle shaped.

(From Christison's "Crime and Criminals")

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2. There was a tendency toward smaller heads, broader heads and broader faces, the type being, in general, that of lower races or of the infantile period of our own race.

3. There were more physical anomalies than are found among normal persons, mainly in the direction of asymmetrical heads and faces, and deformed palates.

4. There were more defects in sight and hearing, and a greater dullness in the sense of touch, than are found among normal persons.

5. The intellectual reactions were, in general, inferior to the normal. More specifically was this the case in attention, memory and association.

The superstitious nature of criminals is well known. In this respect they are like the inveterate gamblers, whose superstitious beliefs and practises are matters of common knowledge. I have seen a gambler arise from the table and walk around his chair to "change his luck." I knew another to change his trousers with the same object in view. The majority of them fear the number 13, and practically all believe in the mascot and the hoodoo. Although all gamblers are not criminals as we understand the term, nearly all criminals are gamblers, and the criminal and gaming instincts are very nearly allied. Of such men-

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tal types superstition is the groundwork, and is the psychic anomaly which most strikingly distinguishes them from other men. It is therefore not surprising that the religion of criminals is, for the most part, merely superstition. MacDonald very correctly observes that the criminal's idea of God is that of a benevolent guardian and accomplice. In this view of the instinctive criminal we may well concur in the observation of the Washington criminologist, although we may think it hardly worth while for him, in common with Lombroso and others, to expend time and labor and good printer's ink to show that religion does not militate against the commission of crime; for their investigations all tend to show, if they show anything at all, that the religion of the criminal, in very many cases, merely approximates a form of mental alienation, and should be characterized not as religion but as superstition.

The precocity of the born criminal is well known. Among 462 criminals examined by Marro, 18 per cent had become criminals before reaching the age of 13. Of 43,835 German criminals, N. David found 41 per cent under twenty-one years of age. Of a group of 46 criminals studied by Lombroso, 35 had become addicted to crime before attaining the 16th year. The same

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authority places the maximum of criminality between the ages of 15 and 25. In the course of some investigations made by me in 1906, I found the age of maximum criminality in the United States to be 23. It has been noted in this connection that precocity is a well known characteristic of savages, and this is urged as an additional proof of the atavistic origin of the criminal type.

The tendency to precocity appears to increase as we approach the lower races and the lower animals. The young of the lower animals are more precocious by far than the young of human beings. It is doubtful if a human infant one month of age possesses one-half the intelligence of a pig or pup of the same age; certainly the human being of that age is the more helpless.

Dr. G. Stanley Hall[4] thinks that modern industrial life tends to promote precocity. He says that chief among the causes of the diseases of adolescence "are all those inflences which tend to precocity, e. g., city life with its earlier puberty, higher death rate, wider range and greater superficiality of knowledge, observations of vice and enhanced temptation, lessened repose, incessant distraction, more impure air, greater liability to contagion, and absence of the sanifying influences

[4] Psychology of Adolescence, vol. 1, p. 321.

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and repose of nature in country life." In this view of the matter it is not hard to reach the conclusion that precocity also is of the nature of disease. M. Tarde, the French sociologist, thinks that many of the characteristics of the criminal are rather the results of crime than the cause. This is no doubt measurably true, but not entirely so. The influence of prison life operating upon the criminal would tend naturally toward the production of both physical and psychical characteristics which would not be found among persons living under different environment. It has been asserted that the weak lungs of criminals, for example, are due to prison life. This may be true of some cases, but, personally, I have never seen a tubercular convict who was not so afflicted (at least to some extent, by reason of heredity or otherwise) before entering the prison. It is noteworthy, also, that nearly all tubercular prisoners are convicted of some crime of violence, such as homicide, robbery, rape or burglary; due, doubtless, to a weakened nervous condition which is reflected in a kind of morbid aggressiveness.

There are cases of evident degeneracy in which many of the accepted stigmata are wholly absent, while many of the criteria established by the Lombroso school are present in persons who clearly

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afford no other evidence of degeneracy, insanity or criminality. But it is true that one may usually recognize in the criminal certain physiological and psychical peculiarities, certain anatomical malformations which, although not reducible to an accurate diagnosis as invariable symptoms of a specific disease, yet, in a manner, serve to mark out and set apart the incorrigible criminal as different from all other men. This is my firm belief after an individual examination of more than 3,500 felons. When we have said that the criminal is abnormal, we have probably said all that may be safely said; for the criminal nature does not in every case necessarily display functional or vital phenomena which may, as in the medical science, be accepted as certain proof of a peculiar disease.

It is as difficult to define criminality as it is to define insanity, for there are many varying degrees and types of both. No two normal men are exactly alike, and so is every criminal slightly different from every other criminal, and the conditions which produce crime in one man will not necessarily produce the same result in another. It is absolutely true, however, as a general rule, that whatsoever operates to weaken or strengthen the mental or moral faculties and maintain or de-

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stroy the mental poise does operate to accelerate or retard the tendency toward crime. In other words, persons of good sense, sound of body and of mind, and normal in all their mental and physical faculties, seldom in that state become criminals. They rarely, if ever, fall until the balance is shifted. The man who is in an entirely normal mental and physical condition is naturally averse to crime. From various causes he may in the course of time become a chronic derelict, or he may lose his balance but for a single moment, the unhappy moment in which he falls; but, at any rate, he is in some way and to some extent "out of balance" when the deed is done. In most cases he at once recovers, immediately regrets his offense and is so thoroughly on his guard thereafter that he never commits crime again. But the other class, the worse, and fortunately the less numerous class, never recover their equilibrium, if, indeed, they ever had it, and they go on in crime—because they cannot help doing so.

As early as the Seventeenth Century Sir Matthew Hale, the author of the first great compendium of criminal law, and himself the greatest lawyer of his age, declared: "Most persons that are felons . . . are under a degree of partial insanity when they commit these offenses."

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And the truth noted by Hale is still true of criminals in our day. Hale's opinion is supported by that of others who have had long and varied experience in the handling of criminals. Morel demonstrated the tendency of insanity and crime to lapse into each other congenitally. At the time Bruce Thompson made his investigations, 1 in 47 of the criminal population of Scotland was insane, as against one in 432 among normals. Dr. Goddard of Vineland, New Jersey, a very careful investigator, says that 25 per cent of the inmates of the reformatories of the United States are feeble-minded.

One penitentiary official, who has handled more than 15,000 convicts—a man who learned his criminology not from the books, but from the living subject, and in a place where a mistaken diagnosis would have resulted in death to himself and others—gave me very briefly his opinion concerning the criminal class. As he expressed it, "they are all crazy."

This, to be sure, is not to be understood as such a degree or kind of insanity as should be accepted as a legal defense to a criminal prosecution. The habitual criminal may know what he is doing, but he is usually lacking in moral perception or in will power, or in both. But the moral sense while ob-

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tuse in some respects, or in most respects, is rarely wholly absent, excepting in a few cases of moral idiocy. Thus, a man may be an arrant and incorrigible forger, and yet he could not be induced to commit a murder or ravish a woman. This peculiarity will nearly always be found in the habitual criminal; at least I have invariably found it to be so. For example, I call to mind a horse thief. He was serving his third term for that offense. When he is released he goes out and steals another horse. This seems to be his specialty, and it never occurs to him to steal anything else, or to commit any other crime. This man has the pointed skull (one of Lombroso's indicia) but has few of the other physical marks of degeneracy. I knew another who was serving his third term for bigamy. He has never been accused of any other crime; he is kind hearted, sober, industrious, and, I suppose, honest. But his matrimonial affairs are always more or less involved. This man has a heavy and protruding jaw, such as we often find in men who commit crimes of violence. Ottolenghi, however, found the large lower jaw to be characteristic among sexual offenders. There is another, whom I call to mind, as one who bore none of the usual external stigmata. He was a forger. Employed as a bookkeeper in one of the prison fac-

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tories, he was so competent, so obliging, and apparently so honest, that he won the confidence of the employing contractor whose influence later secured for the man a good position in New York City. There he succeeded in business, but could not refrain from committing another forgery. After serving a sentence in New York he went to South America, and at last accounts was in prison there for still another forgery. There is no apparent reason why this man should commit crime, but he will probably always be a forger; never a murderer, rapist or burglar, but always a forger. Another forger of my acquaintance has served penitentiary sentences in three states. His crime is always the forgery of a check for ten dollars. A very peculiar case which came to my notice was that of a burglar, who followed the trade of a journeyman barber. He would always burglarize the shop in which he was working, steal the razors, and attempt to sell them. He did this on three occasions, and each time was sentenced to the penitentiary and served his sentence. This man was never known to commit any other crime, nor to burglarize any place other than the shop in which he was working at the time. Another habitual criminal, well known to the prison and police officers of a number of American states, was "Dutch

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Charley." He lived to a very great age, and served thirteen terms of two years each in the Missouri penitentiary, besides a few terms in other states. In every case his crime was some sort of fraud whereby he obtained money under false pretences—the real estate transaction being his favorite game. He never committed a crime of violence. A diamond thief of my acquaintance never attempts to steal anything else. He frequently is caught, but this does not destroy his unbounded faith in his ability to "get by" at some future time. I never heard of his committing any other crime, but he bears the look of the homosexual type of pervert. Others follow burglary as a trade, some are pickpockets by profession, and so *ad infinitum*.

Without attempting the various and minute subdivisions practiced by European students of the subject, it may suffice us to observe that of the character detailed above is the really *criminal* class as we know it and understand it in the United States. It is idle to assert that such men are of absolutely normal mentality. I, for one, cannot account for such phenomena upon any rational hypothesis other than the theory of mental abnormality. While the symptoms of this disease, if such it be, cannot in all cases be referred to any appreciable lesion or change of nerve or brain

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structure, it will be remembered that comparatively but a few years have elapsed since the day when mental disorders of all kinds were classed as "diseases" merely in a figurative sense. The trend of investigation today points unerringly to a time, in the not distant future let it be hoped, when those morbid mental processes which eventuate in anti-social acts will be made an object of psychiatric attention.

In searching out the causes of these abnormalities we nearly always find some pathological condition in the physical or mental constitution of the individual. Sometimes the trouble is directly due to heredity. Thus in his book on "Marriage and Disease," Dr. Strahan gives a diagrammatic history of eight families, showing tendencies toward degeneracy running through several generations. While in tracing the posterity of the Jukes, Dugdale found criminal tendencies in a great majority of the descendants. But hereditary tendencies are not always controlling. It is true, also, that in tracing hereditary influence we are sometimes deceived by coincidents which are due merely to similarity of environment.

It may be stated as generally true that any influence which tends to destroy the physical and mental vigor, to shatter the nerves and weaken

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the will, acts as a predisposing influence toward crime. Such conditions are sometimes caused by dissipation alone, sometimes by dissipation conjoined with a physical ailment, and sometimes by inherent abnormalities dissociated from any known external cause or established prenatal influence.

The investigation of autotoxemia in its relation to crime has proven to be an interesting and valuable study. Dr. Lydston[5] says: "That organic and inorganic poisons of greater or less degree of toxicity are developed or retained in the human body as a consequence of perverted metabolism, improper food, defective respiration, faulty elimination, deranged glandular action, or bacterial action in the tissues and viscera, especially in the gastro-intestinal tract, is now generally accepted. The application of the various toxemias thereby produced to the etiology of vice and crime may seem, at first sight, far-fetched; but tolerant and critical reflection should put it in a different light. . . . Unstable will and emotions, erratic impulses, acute mania, hypochondriasis, melancholia, suicidal tendencies, etc., have long been known to be produced by organic poisons introduced from without. Modern science

[5] Diseases of Society, etc., p. 211.

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is gradually developing the fact that they can be produced by poisons elaborated in the body."

Cranial trauma in its relation to crime is likewise an interesting study. In a discussion at the Medico-Psychological Society of Paris (Proceedings for 1881) M. Dally said that: "All criminals who had been subjected to autopsy (after execution) gave evidence of cerebral injury." That an injury to the skull may produce epilepsy has long been among the recorded facts of medical science, and epilepsy so caused has been relieved by surgical treatment. That epileptics are all more or less irresponsible is well known, and an epileptic under the influence of intoxicants is usually bereft of reason. I have known many criminals who appeared to have become such because of precisely this condition. But cranial trauma, or skull-injury, does not always result in epilepsy, and inasmuch as science does not at the present time recognize the remote results of such cases, I may be permitted to describe a few subjects which have fallen within the scope of my own personal observation:

B. was a normal child, with no vicious traits. When twelve years of age he was kicked by a mule, thereby suffering a skull injury consisting of a dent four inches long and half an inch deep

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above one ear. Thereafter he evinced all his former normal traits, with the exception that he was so quiet and reserved as to be regarded somewhat queer, and when his anger was aroused, which however was but seldom—he was uncontrollable. Ten years later, upon very slight provocation, he slew a man in the presence of the victim's family and then murdered the whole family, for which he was hanged.

D. suffered a similar injury in childhood, but was thereafter more or less eccentric, although apparently normal in his social relations. Many years later, for a very trivial cause, and without having exhibited any other evidence of insanity, he committed murder; was sentenced to death, was saved from the gallows by a lunacy commission, and died in an insane asylum while submitting to a surgical operation designed to relieve the pressure upon the brain caused by the former injury.

F. was a citizen of prominence and respectability, and when under the influence of intoxicants was never violent. He fell from a building and suffered a severe injury to the skull; thereafter he was violent and uncontrollable whenever under the influence of intoxicants, although at other times normal. While intoxicated he committed a murder upon slight provocation.

S. was another who had suffered a cranial injury in childhood. His nature was thereafter apparently unchanged, with the exception that

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when angered he became uncontrollable. After reaching maturity he committed murder.

T. was a normal male child, with no criminal tendencies. At the age of twenty the kick of a horse produced a depression of the temple. He was unconscious for several hours. For several days thereafter he was "subject to dizziness, double vision, and especially lapses of memory. The double vision remained for several weeks. Thereafter for years, when worried, he exhibited signs of absent-mindedness." (The quotation is from the affidavit of his physician.) Five years after the injury he forged a check, used the proceeds to buy a quantity of jewelry, and concealed the proceeds of his crime in a place where it was certain to be discovered. He has exhibited no other evidences of insanity.

N. was a normal female child. Her skull was badly injured and her nature remained unchanged with the exception that she was thereafter disposed to melancholy, a disposition which grew upon her until long after maturity, when, without other evidence of insanity, she committed suicide.

These incidents will serve to illustrate a numerous class which have fallen under my personal observation, and, whatever the prevailing scientific opinion may be, I have been forced to the conclusion that cranial trauma which does not immediately result in perceptible insanity or epilepsy,

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may nevertheless to some extent impair the mental balance and at a remote period result in crime.

Among the criminalistic tendencies are the strong predilections toward alcoholism, the use of narcotics, sexual incontinence, the aversion to work, and generally insanitary and unhygienic modes of life. The relations of alcoholism and crime have been made the subject of exhaustive research. Dr. MacDonald has catalogued over 400 works upon this and allied subjects, by the scholars of Italy, France, Germany, England and the United States. In a brochure published by me upon this subject in 1910, the conclusion was reached that alcoholism was quite as often the result as it was the cause of morbid physical and mental conditions, and subsequent investigations have not caused me to recede from that position.

Investigators are frequently misled by the convicts themselves. It is well known that criminals who are victims of the opium habit will never let the fact be known if they can possibly conceal it, but most convicts who have been addicted to the use of alcoholic drinks in any degree do not hesitate to proclaim themselves the victims of intemperance. Most criminals who have used liquor at all will attribute their whole misfortune to drink,

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thinking thus to evade moral responsibility for the crime. Thus, one P. told me that he held up a street car and robbed the conductor, "Because I had been drinking." As to precisely what quantity of intoxicating liquor must be consumed in order to induce the robbery of a street car, let savants judge. I afterwards discovered epilepsy and insanity in the family history of this man.

Alcoholism is, I am persuaded, most frequently itself a result of some primary cause which occasioned both inebriety and crime, and which would have resulted in crime, whether it produced inebriety or not. Inebriety, to be sure, stands out in the open, and may always be seen; but the more powerful, insidious and hidden elements of the criminal diathesis, such as heredity, nerve disease, cosmic influences, defective training and vicious environment, are usually more difficult of apprehension and are seldom disclosed excepting upon the most thorough and patient investigation. So, too, of insanity: The majority of insane inebriates are inebriates because of their insanity rather than insane because of their inebriety. Dr. Austin O'Malley, of Philadelphia, in an interesting study of this subject published in March, 1913, says: "A man may be an alcoholic because he is primarily a criminal, as well as a criminal because he

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is an alcoholic; yet a drunken criminal and the statistician both are inclined to make alcoholism the cause." In England, Dr. Branthwaite, Inspector of Inebriates' Homes, found that 62 per cent of the inmates were cases of mental disease masked by alcoholic indulgence. Habitual drunkenness is, in most cases, as Dr. Branthwaite says: "The obvious sign of incipient mental disorder." Subjects so affected are ready victims of chronic alcoholism, and all too frequently these unfortunates reach the penitentiary instead of an insane asylum. Dr. Lydston, although believing that alcoholism is a prime factor in crime causation, has noted that the family histories of dipsomaniacs are largely tinctured with nerve disorder, and that hysteria, epilepsy, migrane, and even insanity, are found all along the line. "In such cases," says he, "inebriety is but one of the varying phases of bad heredity. The degeneracy of nerve structure and function, with the correlated defective will, may develop criminal or depraved instincts, as already remarked." The bad effects of alcoholic drinks are chiefly noticeable upon defectives and adolescents and upon the adolescent races of men. The government of the United States has recognized this fact in its dealings with the Indian tribes, and has visted the severest penalties upon those found

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guilty of selling intoxicating liquors to Indians. The deleterious effect of intoxicants upon the negro race is almost equally marked, and for this reason, among others, the sale of intoxicants has been prohibited by state laws in a number of the Southern states, where the negro population is disproportionately large. In the United States, according to Bosco, only 20 per cent of the murderers are addicted to alcoholic drink. Spain and Italy, which are temperate nations, supply a larger percentage of homicides in proportion to population than do England, Belgium, Norway and Germany, where the consumption of alcohol is greatest. The following table is from Coghlan:[6]

	Consumption of pure alcohol per capita (in gallons)	Number of homicides to each 100,000 inhabitants
Austria	2.80	25.0
Spain	2.85	74.0
Germany	3.08	5.7
Italy	3.40	96.0
United Kingdom.	3.57	5.6
Belgium	4.00	18.0
France	5.10	18.0

While a slight preponderance of scientific opinion may seem disposed at this time to accept the link of causality between drink and crime, the authorities are not in accord as to the nature and strength of the alcoholic drinks thus repudiated.

[6] Wealth and Progress.

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Thus, Prof. Ferri,[7] opposing the use of alcoholic drinks, closes a vigorous refutation of the theories of Tammeo, Fournier, Colajanni and Krummer (who deny the causal connection between alcoholic indulgence and crime), with the observation that it was natural that indirect measures against alcoholism should have been resorted to long ago, "such as the raising of the tax on alcoholic drinks, and the lowering of that on wholesome beverages, such as coffee, tea and beer." Ferri evidently regarded beer not as an "alcoholic drink," but as a "wholesome beverage," since he places it in the same category with coffee and tea.

The activities of the Galton Laboratory for National Eugenics were recently directed toward the problem of ascertaining precisely the relation between alcoholism in parents and the height, weight, health and intelligence of their offspring. While it was found that alcoholism and tuberculosis maintained a high degree of association, the fact was also developed that the same high ratio of tuberculosis existed among the non-drinking members of the same community, and it was also determined that alcoholism in the parents had no effect at all upon the height and weight of their children.

[7] Crim. Soc., p. 118, et seq.

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Lombroso in his "Man of Genius" has called attention to the fact that Byron, Beethoven, Avicenna, Alexander, and other men of genius, were alcoholics, as were certain of their parents; but this, he says, is rather an effect and complication of genius than a cause, "for these great and powerful brains need ever some new stimulant." Edgar Allen Poe, Stephen A. Douglas, Richard Brinsley Sheridan, Robert Burns, Joseph Addison and Samuel Johnson also drank to excess. Goethe, the most gigantic intellect of his generation, in his lifetime consumed fifty thousand bottles of wine. Three bottles per day was the regimen of Walter Scott. Phillip G. Hammerton, in "The Intellectual Life," declares that "The poets who from age to age have sung the praise of wine were not wholly either deceivers or deceived."

But it is by no means to be supposed that the habits of men of genius form a criterion for the conduct of ordinary men. Gibbon, the historian, and Charles James Fox, the orator and statesman, were inveterate gamblers. Of Hartley Coleridge it was truly said: "He writes like an angel and drinks like a fish." The abnormality of genius (of which alcoholism is sometimes a characteristic) has been the subject of much controversy, but the better scientific opinion will sup-

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port this classification from MacDonald: "Human beings may be classified, in general, into normal and abnormal. While the term 'abnormal' often suggests unethical or unesthetic characteristics, it is not here so employed. Thus, a great reformer and a great criminal are both abnormal in the sense of diverging greatly from the average or normal man. The principal and extreme forms of human abnormality are insanity, genius and crime."

Venturi has made some interesting investigations into the subject of the use of tobacco among criminals. He shows that criminals and lunatics form the tobacco habit very early in life. While the use of tobacco by adults of the normal as well as abnormal classes is probably only a coincident, and without effect upon the moral character of the individual, the effect upon children and adolescents is highly deleterious. According to Marambat, who found that among 603 delinquent children from 8 to 15 years of age 51 per cent had formed the tobacco habit before their detention, the use of tobacco by a child leads to idleness, drunkenness, and finally to crime. The number of tobacco users among alcoholic convicts was 74 per cent, and among relapsed criminals, or recidivists, 79 per cent were smokers; 89 per

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cent of swindlers, beggars and thieves were found to be tobacco users, and, as well known, the habit is common among prostitutes. But, notwithstanding these facts, the countries showing the highest per capita consumption of tobacco show the lowest rate of criminality.

The habitual use of opium obliterates the moral sense, and is a characteristic of a certain type of criminal. It is an axiom among prison officials in the United States, that "there is no hope for the dope-fiend." The opium habit is the most terrible scourge of the Underworld. I never knew or heard of the reformation of a criminal so afflicted. Fortunately the opium habit is not general with the Caucasian race, although it numbers among its victims a few like DeQuincey and Madame De Stael.

Although the drug makes its appearance in every prison, the convicts of the Pacific Coast states show a greater percentage of opium victims; a condition which is due no doubt to the large number of Asiatics in that part of the United States. Drähms found fifty per cent of the convicts at San Quentin to be opium users. Guimbail[8] describes the desperate extremities to which opium victims will result in order to obtain the drug. Al-

[8] Annales d'Hygiene Publique.

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PLATE IV.—SEXUAL DEGENERATES.

(Courtesy St. Louis Police Department.)

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though its importation is forbidden in all penitentiaries, it finds its way into them all, and convicts addicted to its use will make any sacrifice, however costly, and assume any risk, however great, to obtain it.

That sexual incontinence is a universal trait of the criminal class is well known. This is demonstrated by the prevalence, ex. gr., of syphilis among convicts. In the Ohio State prison a few years ago it was learned that 70 per cent of the convicts were afflicted with this disease. The percentage in other prisons is likewise abnormally high. Like tattooing and gambling, the sexual promiscuity of criminals tends to support the theory of the atavistic nature of the criminal type, and the same may be said of the criminal's well-known aversion to work and his insanitary and unhygienic life. In the typical criminal we find the uncleanly and unwholesome life; impurity in thought and deed; the morbid and the abnormal in body and in mind. In another class of criminals, all too common in the United States, we find the over-taxed body and mind and the too highly tensioned nerve, leaving their trail of blood behind; brain-fag, worry, despair, the wreck of nerves, the wreck of character, the wreck of conscience—and the prison records tell the rest.

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PART II.
PROPHYLAXIS.

CHAPTER IV.

EUGENICS.

A world-wide impetus was given by the First International Eugenics Congress to the study of eugenics. The congress was held at the University of London, England, July 24th to 30th, 1912, but eight years after the "new science" was formally outlined by Francis Galton. Galton defined the subject as "the study of agencies under social control that may improve or impair the racial qualities of future generations, either physically or mentally." W. E. Kellicott, professor of biology in Goucher College, in his outline of the new science, published in 1911, defines it as the "science of racial integrity and progress, built upon the overlapping fields of biology and sociology." The study is based, necessarily, upon the

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theory of the hereditary transmission of physical, intellectual, and moral characteristics, a theory which has long been and is still the subject of controversy. The data are as yet insufficient to support any authoritative conclusion, excepting as to physical traits, but the theory of the physical origin of all mental and psychic phenomena is not without brilliant and effective support.

The hereditary transmission of physical traits has been thoroughly demonstrated as to the lower animals, as well as in the vegetable kingdom, making due allowances, of course, for variation, fluctuation, mutation and reversion. Lamarck (although he did not grasp the theory of natural selection afterwards developed by Darwin), in the year 1815, in the introduction to his "Animaux san Vertebres," enunciated a principle which has been successfully followed in the breeding of domesticated animals ever since, namely, his "Fourth Law," which he states as follows: "Everything which has been acquired, impressed upon, or changed in the organization of individuals during the course of their life, is preserved by generation, and transmitted to the new individuals which have descended from those which have undergone these changes." Mendel, the Austrian monk, has followed with these discoveries, as

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summarized by Castle: "(1) His law of dominance; when, for example, the offspring of two parents differing in respect of character all resemble one parent and possess therefore the dominant character, that of the other parent being latent or recessive. (2) In place of simple dominance, there may be manifest in the immediate hybrid offspring an intensification of character, or a condition intermediate between the two parents, or the offspring may have a peculiar character of their own. (3) A segregation of characters united in the hybrid takes place in their offspring, so that a certain per cent of these offspring possess the dominant character alone, a certain per cent the recessive character alone, while a certain per cent are again hybrid in nature."[1]

So universally are the principles of heredity in animal breeding now understood and accepted that no one would at this day think of buying a race horse without looking for the speed record in his pedigree; nor a dairy cow without a view to the milk stock in her ancestry. The same principle applies to poultry. Acting in obedience to the established laws of heredity, breeders have developed hens that are veritable egg-laying machines, cows that yield a hundred pounds of but-

[1] See Mendel's Principles of Heredity, by Bateson.

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ter per month, and horses that out-speed the wind. Pursuing these laws man has increased the fertility of grain a hundredfold and multiplied the variety and the beauty of innumerable fruits and flowers.

These things have not come about directly through the law which Darwin called natural selection. They are the product of the hand of man, working in the light of biological law. Nothing seems impossible to the breeder's art. An English poultry breeder once said to the author: "I can breed the Stars and Stripes or the British Jack upon the wing of a fowl if you will give me time."

Can man apply these principles to himself? Can eugenics ever overcome the law of natural selection? Both questions, I think, may be answered in the affirmative. But the eugenist should not base his hopes entirely upon the "agencies under social control," as Galton seems to do. Assuredly, we shall not soon behold the law-made man. Public opinion must always form in advance of the law. In the march of human progress the law does not lead the van. It is always in the rear. Men and women, through education, may employ correct principles in matrimonial selection. They must learn to do so before the so-

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cial will and conscience, in this respect, can be crystallized into law; and then there will be little need to invoke the legislative functions of the state.

But, having made the perfect physical man, will our task then be done? The criminologist, the sociologist, the student and the friend of man, will not lose sight of the moral and intellectual attributes of the human species. How are these qualities affected by the laws of breeding? At this point the analogies drawn from the breeding of the lower animals cannot serve us, and the data of vital statistics are insufficient to support a dogmatic view.

In the study of human heredity, the variations and fluctuations, due in many instances to environment, are perplexing, and we should always remember, with Dugdale, that "The tendency of heredity is to produce an environment which perpetuates that heredity." It is to be noted, also, that where the parent stock is unable to control the environment, hereditary traits are less marked. Thus, the penal colonies of New Zealand and Tasmania have bred a better race of men, no doubt, than could have been expected of the same stock had the deported convicts remained in England.

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Lombroso summarizes the investigations of Marro, Sichart, and Orchanski, together with his own observations upon the physical effects of heredity, as follows: "Resemblance to the father prevails, but more in the case of boys than girls. The same principle holds true for structure, although the boys show more variability. If one of the parents is diseased, there is a tendency, stronger in the case of the father, to transmit the disease to children of the same sex as the parent affected. This phenomena shows itself especially in the case of neuropathic parents, phthisical parents reversing the relationship. Transmission of disease, consequently, is progressive with the father, regressive with the mother; the pathological condition of the father tends to repeat itself in the children. Morbid heredity depends, then, upon two factors—the sex of the parent and the intensity of the morbid condition. Males inherit diseases from both parents and in greater intensity, having a tendency to transform functional disorders into organic ones; while females show the opposite tendency." What Lombroso says of resemblance to the father, however, is not borne out by the experience of animal breeders, excepting where there is a want of prepotency in the male. For example, a prepotent bull is most

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likely to stamp its characteristics upon the female calf, while the male offspring borrows its traits from the dam. Dr. Lydston, too, thinks that resemblances are transmitted from father to daughter and from mother to son. My own observations in this respect do not support the conclusions of the Italian investigators. Among 690 mothers of Missouri convicts who appeared before me in support of applications for pardon and parole, during a period of four years, I observed that 465 had impressed a strong physical resemblance upon the male offspring. This tendency was especially marked in the case of recidivists.

As to the hereditary transmission of intellectual traits there is a wide divergence of opinion. Ribot[2] champions the view that genius is hereditary, as does Francis Galton. The contrary view is taken by N. K. Royse.[3] Among the instances of direct heredity of genius Lombroso cites the following: Musicians—Bach and Adams; painters—Van der Welde, Van Eyck, Murillo, Correggio, Tintoretto; poets—Tasso, Ariosto, Aristophanes, Corneille, Racine, Sophocles, Coleridge; prose-writers—Dumas, the Cheniers, the Daudets; natural scientists—the Plinies, Darwin, DeCan-

[2] Heredite Psych.
[3] Study of Genius.

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dolle, Hooker, Herschel, St. Hilaire; philosophers —the Scaligers, Humboldt, Schlegel, Grimm; statesmen—the Pitts, Wallpoles, Peels, Disraelis. Others will readily occur to the student.

In a lecture delivered May 18, 1913, Professor R. M. Yerkes of Harvard said: "It is stated by the theorists that since mental traits are inheritable, all that is needed is to select as parents those individuals in whom the desirable traits appear markedly and in proper relation to other characteristics. There is nothing simpler than to breed for intelligence. The difficulty arises from the fact that selection cannot be practiced in the case of man, even for good reasons, as it is practiced by the breeders of plants and domestic animals. There is, however, no alternative method to suggest. If the mind is to be improved, it must be by the selection of the eminently fit as parents." This view is supported by certain researches in England. The class lists of Oxford during a period of 92 years, according to Schuster, show that first honor men had 36 per cent first or second honor fathers, and that second honor men had 32 per cent first or second honor fathers.

Whatever may be true as to inherited mental traits, the examples of hereditary moral delinquency are striking in both character and number.

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Ribot has discovered numerous examples of hereditary predilection toward certain forms of vice and crimes. Professor Poellmann of Bonn traced the posterity of a drunken woman during five or six generations. Her progeny numbered 834, of which the records of 709 were obtained. All these were defectives and degenerates and to date had cost the government $1,206,000. Richard Dugdale's "History of the Juke Family," probably the best known genealogy of crime, disclosed 1,200 of the progeny of Ada Juke, of whom nearly 1,000 were criminals, and they had cost the state of New York $1,300,000. Jörger has worked out the history of a Swiss family named Zero, during several generations, the majority being degenerates. Rev. O. McCulloch traced 1,750 offspring of Ben Ishmael of Kentucky, nearly all of whom were degenerates and criminals. Dr. Stocker of Berlin studied 834 progeny of two sisters; all were degenerates or criminals. Sichart claims that twenty-five per cent of the German criminals are of degenerate ancestry, and Virgilis says that thirty-two per cent of Italian criminals are of degenerate ancestry. Golgi discovered the hereditary influence of epilepsy and other nerve diseases in seventy-eight per cent of insane persons.

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Professor Laycock says: "The line of hereditary transmission of mental and moral qualities is as inexorable in these moral imbeciles as in other men, and adds to the imbecile, vicious and degraded part of the population." Bruce Thompson declares: "Intimate and daily experience have led me to the conviction that in by far the greater proportion of offences crime is hereditary, which tendency is in most cases associated with bodily defect."

Although the study of heredity has occupied many of the most brilliant minds of the last century, science has to this time been unable to wholly dissociate the influence of environment from that of heredity, nor to determine just how far heredity influences environment. We know that heredity is an important factor, but we cannot from the data at hand tell precisely to what extent it will operate exclusive of those social and individual influences by which every human being is surrounded. Racial development, therefore, cannot be said to be wholly a matter of animal breeding. Dr. S. G. Smith,[4] Professor of Sociology in the University of Minnesota, declares that "The materialistic school of eugenists presents a form of scientific fatalism in the presence of which

[4] Medico-Legal News, December, 1912.

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human character and responsibility alike crumble." That is true if the school is to confine itself wholly to biological principles. But Galton apparently did not so intend, nor do many of his followers.

It is known, and must be always borne in mind, that the proper care of the offspring is quite as vital as the proper selection of the parental stock. Scientific housing, care and feeding must accompany scientific breeding, if anything but disappointing results are to be obtained. None of these conditions may be safely overlooked. All are almost equally important. To recur once more to the analogies supplied by the breeders of domesticated animals, what would become of the Berkshire and the Poland China, if all swine (as is humorously said of the Arkansas "razorback"), were fed for speed instead of for pork? What would become of the fastest breed of horses, within a few generations, if they were harnessed to the plow? Let one of the egg-producing marvels of the poultry world be confined to a narrow coop, deprived of exercise and fed only upon corn, and within a very few generations her egg record would be surpassed by the humblest of the mongrel type of the barnyard. The champion Jersey cow of the world was Jacoba

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Irene, *plus* the brains of her keeper. Dr. C. H. Eckles, Professor of Dairy Husbandry in the Missouri Agricultural College, declares that the best dairy cow in the world may be quickly ruined by improper care and feeding.

Specialists in animal breeding do not overlook a single factor in the development of the particular qualities sought. Eugenics must proceed along the same broad lines if it is to meet the expectations of its protagonists. This is the stumbling point of eugenics. As Professor Kellicott says, in his book previously referred to (p. 76), "It is comparatively easy to improve the condition of the individual by improving his environing conditions — cleaning him, educating him, leading him to higher ideals in his physical and mental and moral life. But as this is easy, so it is impermanent. All this is modificational and has no influence on the stock. This is not opposed by the eugenist; it simply is no part of his province, for its effect is not racial." In other words, we are to depend upon stirpiculture alone. We are simply to bring the right man and the right woman together—and leave the results to accident, to chance, or to the "impermanent" and adventitious philanthropy of social experiment. Karl Pearson, known as Galton's "beak and

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claws," boldly states: "Selection of parentage is the sole effective process known to science by which a race can continuously progress." A cattle breeder who managed his herd upon that principle would soon find himself a bankrupt.

In this inquiry we are chiefly concerned with eugenics as a preventive of crime. If the application of this "new science" to human life is to give us better and stronger men, it may well claim the attention of the student of criminal prophylaxis; for, assuredly, the best way to solve the crime problem is to quit making criminals. In so far as hereditary physical and mental diseases may be said to operate as inducements to crime, to that extent, at least, eugenics appears to supply a certain and an adequate prophylactic. But to go farther than that, the new science must proceed far beyond mere matrimonial selection. It must conserve the vital forces of the individual after he is brought into being. It cannot rest its case entirely with the human germ-plasm. It must literally observe all the laws of health. It cannot ignore diet, sanitation, exercise, or rest. Giving due heed to all of these it may produce the structurally perfect man. But the task will then only be begun. Nature makes men; but it does not always make citizens. Up to this point

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eugenics will merely have produced an animal; a very beautiful, superior and perfect animal, it is true, but none the less an animal. Are we to thus be brought to an apotheosis of the brute? In the words of Emerson, "Man betrays his relation to what is below him, thick-skulled, small brained, fishy, quadrumanous quadruped, ill-disguised, hardly escaped into biped, and has paid for the new powers by the loss of some old ones. But the lightning which explodes and fashions planets and suns is in him. On the one side, elemental order, sandstone and granite, rock ledges, peat bog, forest, sea and shore; on the other part, thought and the spirit which composes and decomposes nature. Here they are, side by side, god and devil, mind and matter, king and conspirator, riding peacefully together in the eye and brain of every man." Having made him a beautiful and perfect animal, is eugenics to stop at this point? Can we assume that the healthy thought will always attend the healthy body, and that pure, clean blood will make for the pure and cleanly life? We certainly cannot assume the contrary. This much we know: disease—physical, social, mental and moral disease—is the diathesis of crime. Crime may be found elsewhere, it is true, in sporadic cases; but disease is its native element.

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Circumstances which are unfavorable to perfect hygienic conditions cannot be favorable to mental and spiritual growth. The genius, of course, is frequently found to be an exception to this as well as to all other rules.

Caesar, Napoleon, Wellington, Mohammed, Charles V., and Peter the Great were epileptics. Pascal, Walter Scott, Swift, Linnè, Johnson and Warren Hastings suffered from paralysis. Heine and Coleridge suffered from spinal disease. Socrates, Richelieu, Descartes, Goethe, Cromwell, Rousseau, Mozart, Hugo, Compte, Swift, Johnson, Cowper, Southey, Shelley, Byron, Goldsmith, Tasso, Chateaubriand, Pope and Napoleon suffered from hallucinations, symptomatic of insanity. Pope, Byron and Alexander the Great suffered from deformities. Milton and Homer were blind, and Beethoven was deaf. Most men of genius displayed eccentricities which stamped them as neurotic. But we are not to infer from these facts, that disease is favorable to the development of genius.

As a matter of fact, notwithstanding the cocksureness of some scientists, we know very little of the mind of man. But recently the world was astonished at the remarkable intellectual growth of two Harvard boys, the children, respectively, of

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Professor Boris Sidis and Professor Leo Weiner. These two learned professors explained that the great mental powers of their children were due neither to heredity nor to any unusual circumstance whatsoever, but were simply the easy and natural outcome of certain new methods of education. But who would hazard the prediction that the same educational methods, applied to a number of children of the same parents, would produce precisely the same results in each case? Many a great mind has arisen under the old methods, and many a giant intellect has arisen apparently without method and without what the world calls opportunity. What was the method that gave arms to Napoleon, strategy to Themistocles, or "tipp'd Isaiah's lips with hallow'd fire"? What method gave to Elihu Burritt his fifty languages? Did he hammer them out at his forge? How do we account for William Cullen Bryant, or Alexander Pope? How explain the mighty heart of Lincoln? Method amounts to much, no doubt; parental selection is important, and environment may vastly help or harm; but in the birth of a great intellect and the shaping of its destiny, there is something far above and beyond the hitherto established powers of finite mind to grasp. Blind Milton saw the gleaming arma-

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ments of Heaven, and Beethoven, deaf, heard symphonies that other minds cannot conceive. Always and everywhere, in the study of mind, its origin and its powers, we are face to face with the Unknown. Here we approach the borderland of science, the horizon of the Unknowable, the twilight of the gods, vast and baffling as the soul of man, where the laws of the Infinite hold mystic sway and "execute their airy purposes." When we know these laws in their entirety, we shall know the secret of life itself. Toward that end we have, undeniably, made some progress; and science bids us hope. There have been compiled with great skill and industry, perhaps a half dozen criminal genealogies. Studies have been made of small communities and heterogeneous groups, during brief periods of time. From all this we have derived a mass of theory and a modicum of fact, but, in point of actual demonstration, regardless of what Darwin says of rock pigeons, and whatever Mendel may say of mice, guinea-pigs and sweet peas, we are not far advanced beyond the view that,

> "We are such stuff
> As dreams are made on; and our little life
> Is rounded with a sleep."

A century and a half after the Saxon invasion of England, according to Bede, the Christian

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missionaries came. A council was called and a chief of the Northumbrians arose in the assembly and said:

"You remember, it may be, O king, that which sometimes happens in winter, when you are seated at the table with your earls and thanes. Your fire is lighted and your hall is warmed, and without is rain and snow and storm. Then comes a swallow, flying across the hall; he enters by one door and leaves by another. The brief moment while he is within is pleasant to him; he feels not rain, nor cheerless winter weather, but the moment is brief—the bird flies away in the twinkling of an eye, and he passes from winter to winter. Such, methinks, is the life of man on earth. It appears for awhile; but what is the time which comes after—the time which was before? We know not. If, then, this new doctrine may teach us somewhat of greater certainty, it were well that we should regard it."

Thus may we greet the new science of eugenics. If this new doctrine may teach us somewhat of greater certainty it were well indeed that we should regard it. At any rate, let it be received with an open mind. The program of the eugenists, though still in the formative stage, is chiefly one of education, and that is what the world needs most today.

First in importance the eugenist places the mat-

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ter of research. At this point he should receive the hearty co-operation of all organized government. No comprehensive and entirely satisfactory system of vital and criminal statistics has been followed for any considerable length of time in any part of the world. Without such a system intelligent research will be forever impossible. The Actuarial Society of the United States and the American Medical Association have for some years been conducting a propaganda in aid of the establishment of bureaus of vital statistics in every state of the Union, and many states have recently created such bureaus, although in most instances, it is believed, the data called for are far less comprehensive than are required to meet the actual needs of science. In the past two years the American Institute of Criminal Law and Criminology has been urging the creation of state departments of criminal statistics, and the propaganda is meeting with some success. Among other things the Institute recommends:[5] (1) The compilation of the genealogies of the institutional charges, including physical weaknesses, diseases to which the different members were liable and causes of death. This can best be done by the State through trained

[5] Proceedings 1912, p. 209.

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field workers under the direction and control of the various charitable and penal organizations. (2) The establishing of a chair of eugenics in the various colleges and universities. (3) The creation and equipment of at least one laboratory for the study of mental diseases in each state; the same to be located preferably at the institution nearest to a college or university having a medical school.

The American Prison Association at Omaha, in October, 1911, after referring to the deplorable and chaotic condition of the sources from which our statistical matter must be drawn, adopted the following recommendations: "That there should be established in each state a permanent board or bureau of criminal statistics. This bureau should be charged with the duty of prescribing the forms in which the records of all criminal courts, police boards and prisons shall be kept, and of specifying the items regarding which entries shall be made. The law creating the bureau should direct that the forms prescribed by it should be uniform as to all institutions of the same class to which they respectively apply, and be binding upon all institutions within the state. The bureau should issue general instructions governing the collection and verification of the facts

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to be stated in the record; it should also be its duty, and it should also be vested with the power, to inspect and supervise the records and to enforce compliance with its requirements." At the time of the adoption of this report, which was prepared by Eugene Smith of New York, Indiana was the only state in which such a bureau existed, and later reports indicate that the work of the Indiana Bureau has been in some measure handicapped because of the failure to endow it with sufficient legal power to enforce compliance with its requests.

The state of Illinois, in May, 1912, enacted the following statute:

"The State Charities Commission shall establish a bureau of criminal statistics, of which its executive secretary shall be the director. It shall be the duty of said bureau to collect and publish annually the statistics of Illinois relating to crime, and it shall be the duty of all courts of Illinois, police magistrates, justices of the peace, clerks of the courts of record, sheriffs, keepers of lock-ups, work-shops and city prisons, or other places of detention holding men, children or women under conviction for crime or misdemeanors or under charges of violations of the criminal statutes, to furnish the said bureau annually such information on request, as it may require in compiling said statistics."

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Until such time as the state may be induced to establish a separate bureau charged with the discharge of these important functions, those functions may, as in Illinois, be vested in the State Board of Charities, or the State Board of Control (which exists in some states) or in the usual State Bureau of Statistics. However, it is of the utmost importance that court officials, as in Illinois, be required to furnish the information desired. The reports, too, should be furnished monthly to the bureau, rather than annually. Antecedent to the collection of statistics, however, and determining absolutely their value when collected, is the system employed for collecting data. The American Institute of Criminal Law and Criminology advocates the adoption of the heredity chart prepared by the Eugenics Record Office of Cold Springs Harbor, New York, and recommends a complete system for the perservation of all psychological, physiological and anthropometrical data, in addition to the facts usually found in the court records. Manifestly, the medical examination thus required should be made under the direction of competent authority, and could not be left to the ordinary court official.

In a very exhaustive paper upon the subject of obligatory psychiatric examination read before

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the Seventh International Congress for Criminal Anthropology at Cologne, October, 1911, Olof Kinberg of Sweden demonstrated that the following benefits would be derived from such examinations:

"1. A certain number of insane persons will be discovered, and given over to a special method of treatment, and will accordingly be eliminated from the number of recidivists;

"2. An important number of psychically abnormal persons will be recognized and can be disposed of in accordance with the nature of their abnormality and the degree of their danger to society;

"3. The peril to society of those criminals neither insane nor abnormal may be established by the courts much more accurately than at present, and thus afford a basis of great importance for the measurement of punishment;

"4. By the delivery of all records to a central statistical bureau, there will come into existence within a few years a full collection of casuistic materials dealing with the real criminal types of the country, which will make possible a profounder statistical basis for dealing with the problem of crime.

"Finally, in a theoretical connection, the examination suggested will deepen our knowledge of criminal psychology and provide a possibility of demonstrating this knowledge; because it will be

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PLATE V.—A GROUP OF BURGLARS.

(Courtesy St. Louis Police Department.)

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based not on individual instances, but on the totality of cases in a definite category. In the practical aspect such examination means the sorting out of one of the most important criminalistic elements, and is therefore an indispensable premise —not to be disregarded at any price—of a rational criminal polity based on natural science methods."

Whatever may have been its effects in other parts of the world, in the United States the study of eugenics has given a tremendous impetus to the spirit of investigation into the causes of race development and deterioration. To this unceasing, searching and patient spirit of inquiry we may look with confidence. In that spirit lies the most rational and tangible hope of improvement. Before seriously attempting the solution of the vast problem of degeneracy and crime, we should first seek to understand it. Without accurate knowledge of the subject in all its relations and ramifications no permanent relief is possible. We are in the habit of juggling statistics indiscriminately upon the subject of alcoholism, divorce, child labor, social evil, crimes and punishments of various kinds, etc., etc., when every unbiased investigator knows that the sources of all our information are exceedingly meagre because our methods of collecting data are crude if not chaotic. So long as

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we attack the problem of crime prevention without absolutely accurate knowledge of the causes which produce crime, and without knowing exactly how and where and when and to what extent those causes operate, our legislative and executive officers are proceeding in the dark, and our penal statutes and codes of criminal procedure are but evolving along the line of Cicero's theory that "the best guesser is the best prophet."

In addition to their united efforts to procure a better system of statistics, eugenist scientists are aiding the cause of crime prevention by their ceaseless and wide spread warnings against unhygienic marriages. Great good is being accomplished by the compilation and public dissemination of accurate information concerning the evils of marriage between diseased persons or the marriage of healthy with diseased individuals. While it is probable that we may expect little of the general scheme of legislative prevention of such mismatings, no bounds can be set to the good results which will necessarily flow from these educative influences. The state in the absence of segregation or sequestration can hardly prevent these undesirable sexual unions after the passion of love has once developed. But a knowledge of the dangers and horrors which follow in the wake of

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these unfortunate alliances will in very many instances prevent courtship and the intimate associations which engender the passion of love. The first "eugenic marriage law" to be adopted by any country in the world was enacted by the State of Pennsylvania, June 26, 1913. The law prohibits marriage of the physically and mentally unfit, and is certain to be followed by the enactment of similar statutes in other American States. The law is so recent that its effects cannot become manifest for some time, but its operation will be observed with interest by scientists throughout the world. A similar statute went into effect in North Dakota July 1, 1913.

Dr. Alfred Ploetz, of Munich, has organized the International Gesellchaft für Rassen-Hygiene, and this society is not only collecting and publishing statistical information concerning the problem of racial integrity, but its members agree to submit to medical examination as to their physical fitness for marriage before entering into the matrimonial state, and to refrain from marriage if found to be unfit. On May 25, 1913, the clergymen of the Congregational, Methodist, Universalist, Unitarian and Baptist churches of Lynn, Mass., decided that they would no longer marry couples who do not exhibit physician's certificates

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showing that both are physically fit to be married.

It is questionable how far state regulation of this subject is effective. Certainly it is not so effective as the deliberate will of the intelligent individual. In many states and nations marriage of the feeble-minded is forbidden by law. But in all states and nations there are many persons legally qualified to perform the marriage ceremony, but who are not mentally qualified to determine who are feeble-minded within the meaning of the law. C. H. Reeve[6] says: "If the vilest mortal that lives sees proper to marry, the law issues the license for the asking, takes the fee, makes the record, and leaves the offspring and society to shift for themselves the best they can. Even paupers, while in the poor-house, and criminals, while in jail, are in every way encouraged and given licenses to marry, and are protected by the law. No thought is taken for the unfortunate offspring, or for the body politic or social, and the irreparable evils that must fall upon all. The church adds its sanction, and its ministers aid in making these civil contracts by performing a ceremony with prayers and benedictions. If it is wise to prohibit polygamy, marriage between relations,

[6] The Prison Question.

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and between persons whose insanity or idiocy is self-evident, it is equally wise to prohibit it in all cases where evil may follow. If the law has the power to prohibit and punish violation in the one case, it has equal right in all others. There is an endless procession of children from all these sources coming into the mass of population to live lives of crime, immorality, want, suffering, misfortune, and degeneracy, transmitting the taint in constantly widening streams, generation after generation, with the ultimate certainty of the deterioration of the race and final irreparable degeneracy."

But if these degenerate types were not permitted to marry there is no doubt that illicit intercourse would be the result, and to congenital degeneracy would be added the taint of illegitimacy. As the only alternative remedy, then, eugenists with one accord are advocating the enactment of laws favoring the sterilization of the defective classes, and in this they are quite generally receiving the support of medical men and criminologists.

Eugenists also are rendering great service to humanity in directing constant attention to the horrors of war, which takes from the world its strongest men, and levies a ceaseless toll upon a nation's best resources—its brave and healthy

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men. Eugenics is not wholly concerned with the extirpation of the diseased and unfit. It makes its strongest plea for the propagation of the good and true; for, as said by Dr. Hall, commenting upon the speculations of Galton: "The possibility of improving a race or nation is thus dependent upon the problem of increasing the fertility of the best stock, and this is more important than that of repressing the worst." It has thus opened a new field for philanthropy and pointed out a new goal for the altruist. There is no family of great wealth and power, however sterile, which may not increase the beauty and strength of the racial stock by selecting perfect specimens of young men and women and assisting them to the industrial and social opportunities which will enable them to properly rear a family. These opportunities could best be provided, no doubt, by the removing of all shackles upon industry and the consequent broadening of the field of opportunity; but, until such time as that condition may come to pass, individual aid may enable men to do that which under different economic conditions, perhaps, they might be able to do for themselves.

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CHAPTER V.

ASEXUALIZATION.

Nearly forty years ago Dr. Gideon Lincecum appeared before the legislature of the State of Texas and advocated the asexualization of criminals as a substitute for capital punishment. His suggestion was at first received with ridicule. It has been taken more seriously with the passing years. The modern eugenists, however, no longer advocate castration. They now recommend the operation known as vasectomy in males and oöphorectomy in females, a surgical operation first performed in this country about fourteen years ago (October, 1899). Vasectomy, which is sometimes called "Rentoul's operation," consists in the removal of a small part of each sperm duct. In the female the operation is performed by removing a small portion of each Fallopian tube. The operation is said by competent

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surgical authority to be a very simple one, almost painless, and does not disqualify the patient from work for a single day. It does not destroy the means of sexual gratification, but it does effectively prevent procreation.

Medical opinion is not yet unanimous as to the wisdom of this operation. Some who favor sterilization are disposed to regard castration as the more desirable method, especially in the worst class of criminals, for the reason that the sexual powers and passions still remaining after vasectomy would result in the still wider dissemination of venereal diseases. The person so sterilized would, in this sense, be more dangerous than before. His sexual passions would not be curbed, and his known condition of sterility would afford him opportunity for illicit commerce which he would in some instances not otherwise have possessed, for, as is well known, the fear of possible fecundation, in some cases, is all that withholds the female consent. In these circumstances the spread of venereal disease is certainly to be expected. As is well known, syphilis is itself a fruitful source of degeneracy. It is a more widespread and terrible scourge than tuberculosis. Warbasse declares that "At least one-fourth of our public institutions for caring for defectives is

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made necessary by venereal disease." But, whatever the trend of scientific opinion, the trend of legislative opinion is all in the direction of vasectomy.

In the report of Branch Committee "D" read at the fourth annual meeting of the American Institute of Criminal Law and Criminology, the laws of the various American states which have enacted legislation upon this subject, are summarized as follows:

"Indiana provides, as a board of examiners who shall decide upon whom to operate, two expert physicians and superintendents and boards of managers of institutions where such persons are confined.

"The operation may be applied to confirmed criminals, idiots, imbeciles and rapists.

"Several hundred operations have been done in this state.

"Iowa provides, as a board of examiners who shall decide upon whom to operate, the managing officer of the state institution where such persons are confined, the members of the state board of parole, and the surgical consultant of such institution.

"The operation may be applied to habitual criminals, idiots, feeble-minded, imbeciles, drunkards, drug fiends, epileptics, and syphilitics. The operation applies to both men and women.

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"New Jersey provides that the governor shall, with the advice of the senate, appoint a surgeon and a neurologist, each of recognized ability, for a five-year period, who, with the commission of charities, and the superintendent of the institution shall constitute a board of examiners which shall decide upon whom to operate.

"The operation may be applied to confirmed criminals, feeble-minded, epileptics, and other defectives. Only those who cannot recover and where procreation is not advisable may be operated upon, and only after five days' notice by the board to the court of common pleas in the county. It is lawful for any competent surgeon to operate.

"California provides that the superintendent of a state hospital for insane, the superintendent of a home for feeble-minded, or the resident physician of the state prison, when in their opinion it would be beneficial and conducive to the benefit of the physical, mental or moral condition of any inmate of said hospitals, home, or state prison, to be asexualized, shall call the general superintendent of state hospitals and the secretary of the state board of health, and if two of the three examiners favor the operation, it may be performed on inmate, patient or convict.

"Washington provides that, whenever any person shall be adjudged guilty of carnal abuse of a female person under the age of ten years, or of rape, or shall be adjudged to be an habitual criminal, the court may, in addition to such other pun-

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ishment or confinement as may be imposed, direct an operation to be performed upon such person, for the prevention of procreation.

"Connecticut provides that the directors of the state prison and the superintendents of the state hospitals for the insane are directed to appoint for each of said institutions, respectively, two skilled surgeons, who, in conjunction with the physicians or surgeon in charge at each of said institutions, shall constitute the board of examiners. A majority of the board rules.

"The law may be applied to both men and women who would be liable to produce children with an inherited tendency to crime, insanity, feeble-mindedness, idiocy or imbecility.

"New York provides that the governor shall appoint for a term of five years one surgeon, one neurologist, and one practitioner of medicine, each of ten years' experience, who shall constitute the board of examiners.

"The law applies to feeble-minded, epileptics, criminals and other defective inmates confined in the several state institutions. Counsel must be appointed for the persons to be operated upon, and no operation must be performed until five days after the order of the board has been filed with the clerk of the court and a copy served upon the counsel appointed to represent the person examined. All orders made by the board are subject to review by the supreme court. A complete record must be kept by the institution where the inmate is confined.

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"Utah has also passed a law similar to those cited. In most of these laws, provision is made for severe penalties for those who perform the required operation for improper purposes.

"Governor Sheldon, of Nebraska, in his message to the legislature in 1909, recommended the careful consideration of the necessity for passing a law to prevent the marriage of persons unfit to propagate and also a law for the sterilization of defectives.

"In Illinois, Pennsylvania, Oregon, Texas, Wisconsin and Oklahoma, bills have been introduced for preventing increase in defectives, but have failed of enactment."

The committee recommended the following, which was offered to the Legislature of Wisconsin as a model statute upon the subject:

"The state board of control is hereby authorized to appoint, from time to time, one surgeon and one alienist, of recognized ability, whose duty it shall be, in conjunction with the superintendents of the state and county institutions, who have charge of criminal, insane, feeble-minded and epileptic persons, to examine into the mental and physical condition of such persons legally confined in such institutions.

"Said board of control shall at such times as it deems advisable submit to such experts and the superintendent of any of said institutions the names of any inmates whose mental and physical condition they desire examined, and said experts

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and the superintendent of said institution shall meet, take evidence and examine into the mental and physical condition of such inmates and report said mental and physical condition to the said state board of control.

"If such experts and superintendents unanimously find that procreation is inadvisable, it shall be lawful to perform such operation for the prevention of procreation as shall be decided safest and most effective; provided, however, that the operation shall not be performed except in such cases as are authorized by the said board of control.

"Before such operation shall be performed, it shall be the duty of the state board of control to give at least thirty days' notice in writing to the husband or wife, parent or guardian, if the same shall be known, and if unknown, to the person with whom such inmate last resided.

"The record taken upon the examination of every such inmate shall be preserved and shall be filed in the office of said board of control at Madison, Wisconsin, and semi-annually after the performing of the operation, the superintendent of the institution wherein such inmate is legally confined, shall report to said board of control the condition of such inmate and the effect of such operation upon such inmate.

"The state board of control shall report biennially in its regular biennial report the number of operations performed under the authority of this act and the result of such operations."

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In view of the rapid multiplication of statutes upon this subject the attitude of the courts is important. In the State of Washington the operation of vasectomy was attacked as a "cruel and unusual punishment," and the exhaustive opinion of the Washington court apparently sets that question forever at rest. The case is that of the State of Washington against Peter Feilen,[1] who was convicted on September 30th, 1911, of the crime of rape. The opinion of Judge Crow, which follows, is not only of great historic interest, but it appears to completely settle all question as to the constitutionality of these statutes in the United States, and for that reason it is here set forth *in extenso*:

"The defendant was convicted of the crime of statutory rape committed upon the person of a female child under the age of ten years, and was sentenced to imprisonment for life in the state penitentiary. The final judgment and sentence from which he has appealed further ordered, adjudged and decreed that: 'An operation to be performed upon said Peter Feilen for the prevention of procreation, and the warden of the penitentiary of the state of Washington is hereby directed to have this order carried into effect at the said penitentiary by some qualified and capable surgeon by the

[1] 126 Pacific Reporter, p. 75.

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operation known as vasectomy: said operation to be carefully and scientifically performed.'

"By his first assignment, appellant contends that the trial judge erred in submitting the case to the jury, for the reasons (1) that no degree of penetration was shown, and (2) that the testimony of his victim, the prosecuting witness, was not corroborated by such other evidence as tended to convict him of the crime charged. We find no merit in these contentions. The evidence will not be discussed or stated in this opinion, as no good purpose could be thereby served. We are convinced that, under the rule announced in *State v. Kincaid,* 27 Wash. Dec. 114, 124 Pac. 684, the evidence was sufficient to comply with the requirements of Rem. & Bal. Code, Section 2437. We are also satisfied that the evidence afforded that degree and character of corroboration required by Section 2155, Rem. & Bal., and from all of the evidence we conclude that the only verdict that should have been returned, was the one that the jury did return. The case was for the jury, and their verdict will not be disturbed.

"Appellant was prosecuted under Rem. & Bal. Code, Section 2436, and the penalty of life imprisonment was properly imposed. Rem. & Bal. Code, Section 2287, provides that:

" 'Whenever any person shall be adjudged guilty of carnal abuse of a female person under the age of ten years, or of rape, or shall be adjudged to be an habitual criminal, the court may, in addition to such other punishment or confine-

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ment as may be imposed, direct an operation to be performed upon such person, for the prevention of procreation.'

"It was under the authority of this section that the trial judge ordered the operation of vasectomy, and appellant, by his remaining assignments, contends that it is unconstitutional in that an operation for the prevention of procreation is a cruel punishment prohibited by art. 1, section 14, of the state constitution, which directs that "excessive bail shall not be required, excessive fines imposed, nor cruel punishment inflicted." As the statute does not prescribe any particular operation for the prevention of procreation, the trial judge ordered that the operation known as vasectomy be carefully and skillfully performed. The question then presented for our consideration is whether the operation of vasectomy, carefully and skillfully performed, must be judicially declared a cruel punishment forbidden by the constitution. No showing has been made to the effect that it will in fact subject appellant to any marked degree of physical torture, suffering or pain. That question was doubtless considered and passed upon by the legislature when it enacted the statute. Appellant further contends that the imposition of the alleged cruel punishment as a part of the sentence necessitates a reversal of the judgment. This would not be true, even though we were to hold the operation to be an infliction of cruel punishment, as the judgment of conviction would have to be affirmed with directions to en-

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force the penalty of life imprisonment. When a sentence is legal in one part and illegal in another, it is not open to controversy that the illegal, if separable, may be disregarded and the legal enforced. *United States v. Pridgeon,* 153 U. S. 48; *State v. Williams,* 77 Mo. 310, 313.

"The crime of which appellant has been convicted is brutal, heinous and revolting, and one for which, if the legislature so determined, the death penalty might be inflicted without infringement of any constitutional inhibition. It is a crime for which, in some jurisdictions, the death penalty has been imposed. 33 Cyc. 1518. If for such a crime death would not be held a cruel punishment, then certainly any penalty less than death, devoid of physical torture, might also be inflicted. In the matter of penalties for criminal offenses the rule is that the discretion of the legislature will not be disturbed by the courts except in extreme cases.

" 'It would be an interference with matters left by the constitution to the legislative department of the government, for us to undertake to weigh the propriety of this or that penalty fixed by the legislature for specific offenses. So long as they do not provide cruel and unusual punishments such as disgraced the civilization of former ages, and make one shudder with horror to read of them, as drawing, quartering, burning, etc., the constitution does not put any limit upon legislative discretion.' *Whitten v. State,* 47 Ga. 297.

"On the theory that modern scientific investi-

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gation shows that idiocy, insanity, imbecility, and criminality are congenital and hereditary, the legislatures of California, Connecticut, Indiana, Iowa, New Jersey, and perhaps other states, in the exercise of the police power, have enacted laws providing for the sterilization of idiots, insane, imbeciles, and habitual criminals. In the enforcement of these statutes vasectomy seems to be a common operation. Dr. Clark Bell, in an article on hereditary criminality and the asexualization of criminals, found at page 134, vol. 27, *Medico-Legal Journal,* quotes with approval the following language from an article contributed to *Pearson's Magazine* for November, 1909, by Warren W. Foster, senior judge of the court of general sessions of the peace of the county of New York:

" 'Vasectomy is known to the medical profession as "an office operation" painlessly performed in a few minutes, under an anaesthetic (cocaine) through a skin cut half an inch long, and entailing no wound infection, and no confinement to bed. "It is less serious than the extraction of a tooth," to quote from Dr. William D. Belfield, of Chicago, one of the pioneers in the movement for the sterilization of criminals by vasectomy, an opinion that finds ample corroboration among practitioners. . . . There appears to be a wonderful unanimity in favor of the prevention of their future propagation. *The Journal of the American Medical Association* recommends it, as does the Chicago Physicians' Club, the Southern District

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Medical Society, and the Chicago Society of Social Hygiene. The Chicago *Evening Post,* speaking of the Indiana law, says that it is one of the most important reforms before the people, that "rarely has a big thing come with so little fanfare of the trumpets." The Chicago *Tribune* says that "the sterilization of defectives and habitual criminals is a measure of social economy." The sterilization of convicts by vasectomy was actually performed for the first time in this country, so far as is known, in October, 1899, by Dr. H. C. Sharp, of Indianapolis, then physician to the Indiana State Reformatory at Jeffersonville, though the value of the operation for healing purposes had long been known. He continued to perform this operation with the consent of the convict (not by legislative authority) for some years. Influential physicians heard of his work and were so favorably impressed with it that they endorsed the movement which resulted in the passage of the law now upon the Indiana statute books. Dr. Sharp has this to say of this method of relief to society: "Vasectomy consists of ligating and resecting a small portion of the vas deferens. The operation is indeed very simple and easy to perform; I do it without administering an anæsthetic, either general or local. It requires about three minutes' time to perform the operation and the subject returns to his work immediately, suffers no inconvenience, and is in no way impaired for his pursuit of life, liberty and happiness, but is effectively sterilized."

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"Must the operation of vasectomy thus approved by eminent scientific and legal writers, be necessarily held a cruel punishment under our constitutional restriction when applied to one guilty of the crime of which appellant has been convicted? Cruel punishments, in contemplation of such constitutional restriction, have been repeatedly discussed and defined, although we have not been cited to, nor have we been able to find, any case in which the operation of vasectomy has been discussed. In *State v. Woodward,* 68 W. Va. 66, 69 S. E. 385, a recent and well-considered case which may be consulted with much profit, Brannon, Justice, said:

"'The legislature is clothed with power well nigh unlimited to define crimes and fix their punishments. So its enactments do not deprive of life, liberty or property without due process of law and the judgment of a man's peers, its will is absolute. It can take life, it can take liberty, it can take property, for crime. "The legislatures of the different states have the inherent power to prohibit and punish any act as a crime provided they do not violate the restrictions of the state and federal constitutions; and the courts cannot look further into the propriety of a penal statute than to ascertain whether the legislature had the power to enact it." 12 Cyc. 136. "The power of the legislature to impose fines and penalties for a violation of its statutory requirements is coeval with government." *Mo. P. R. R. Co. v. Humes,* 115 U. S. 512. The legislature is ordinarily the judge

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of the expediency of creating new crimes, and of prescribing penalties, whether light or severe. *Commonwealth v. Murphy,* 165 Mass. 66, *Southern Express Co. v. Commonwealth,* 92 Va. 66. For such a fundamental proportion I need cite no further authority. . . . What is meant by the provision against cruel and unusual punishment? It is hard to say definitely. Here is something prohibited, and in order to say what this is we must revert to the past to ascertain what is the evil to be remedied. Within the pale of due process the legislature has power to define crimes and fix punishments, great though they may be, limited only by the provision that they shall not be cruel or unusual or disproportionate to the character of the offense. Going back to ascertain what was intended by this constitutional provision the history of the law tells us of the terrible punishment visited by the ancient law upon convict criminals. In our days of advanced christianity and civilization this review is most interesting yet shocking and heart-rending.' "

The learned jurist then proceeds with the narration of the cruel punishments mentioned in 4 Blackstone, at pages 92, 327 and 377, and after citing and discussing the English Bill of Rights; *Whitten v. State,* 47 Ga. 301; Aldridge Case, 2 Va. Cases, 477; Wyatt's Case, 6 Rand 694; *In re Kemmler,* 136 U. S. 436, 446; *Wilkerson v. Utah,* 99 U. S. 130, 135; Cooley, Const. Lim. (4th ed.),

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408; Wharton, Crim. Law (7th ed.), Section 3405; *Hobbs v. State,* 133 Ind. 404, 32 N. E. 1019, 18 L. R. A. 774; *State v. Williams,* 77 Mo. 310; *Weems v. United States,* 217 U. S. 349; *O'Neil v. Vermont,* 144 U. S. 323; and other cases says:

" 'In short the text writers and cases say that the clause is aimed at those ancient punishments, those horrible, inhuman, barbarous inflictions.'

"*In re O'Shea,* 11 Cal. App. 568, 105 Pac. 777, the California court of appeals for the first district said:

" 'Cruel and unusual punishments are punishments of a barbarous character and unknown to the common law. The word, when it first found place in the Bill of Rights, meant not a fine or imprisonment, or both, but such punishment as that inflicted by the whipping post, the pillory, burning at the stake, breaking on the wheel, and the like; or quartering the culprit, cutting off his nose, ears or limbs, or strangling him to death. It was such severe, cruel and unusual punishments as disgraced the civilization of former ages and made one shudder with horror to read of them. Cooley on Constitutional Limitations (7th ed.), p. 471, et seq.; *State v. McCauley,* 15 Cal. 429; *Whitten v. State,* 133 Ind. 404, 93 N. E. 1019; *State v. Williams,* 77 Mo. 310. "The legislature is ordinarily the judge of the expediency of creating new crimes, and prescribing the punishment, whether

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light or severe." *Commonwealth v. Murphy*, 165 *Mass.* 66, 42 N. E. 504, 52 Am. St. Rep. 496, 30 L. R. A. 734; *Southern Express Co. v. Com.*, 92 Va. 59, 22 S. E. 809, 41 L. R. A. 436.'

"Guided by the rule that, in the matter of penalties for criminal offenses, the courts will not disturb the discretion of the legislature save in extreme cases, we cannot hold that vasectomy is such a cruel punishment as cannot be inflicted upon appellant for the horrible and brutal crime of which he has been convicted.

"The judgment is affirmed. Parker, Chadwick, and Gose, JJ., concur."

The above is the first case to reach the Supreme Court of any American State upon the subject of vasectomy. Under the authorities cited there would seem to be no doubt that this opinion will meet with the approval of the Supreme Court of the United States, should the question ever come before that tribunal, so long as the operation is performed only as a punishment for crime. Another question is presented, however, when the operation is performed upon those who are not convicted of crime, although it is probable that under the general police powers of the States as defined by the American courts, the operation of vasectomy in such cases could be justified upon the theory of benefits accruing to the public health. The Supreme Court of the United States, how-

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ever, does not take cognizance of cases arising under State laws where the question of "cruel and unusual punishments" is raised. It has been held, in a long line of decisions, that the provision of the federal constitution inhibiting such punishments applies only to the laws made by the federal Congress. Where State laws prescribe such punishments, the construction given by the State's highest court is final.

Vasectomy has lately been a subject of theological discussion and during the past year an interesting debate has been waged among theologians in the pages of the *American Ecclesiastical Review.* Among these theologians the general opinion is inclined to question the lawfulness of vasectomy, and among those who champion that view are Mgr. De Becker, J. U. D., of the University of Louvain, and Fathers Ver Meersch, Villers, and Salsmans, of the Jesuit College of the same city. The arguments against vasectomy, however, appear in some instances to be directed primarily against castration. It would be a more effective preventive of crime and degeneracy, no doubt, if it did produce precisely the same results as those which follow castration. That would destroy the tendency to sexual promiscuity and the consequent spread of syphilis, whereas vasectomy does

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PLATE VI.—TYPICAL THIEVES.

(*Courtesy St. Louis Police Department.*)

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not. In some cases asexualization, therefore, would appear to be the only efficient remedy, but I gravely doubt whether, under our constitution, asexualization would be lawful excepting as a punishment for crime. Certainly so serious and permanent a mutilation as castration should not be lightly or frivolously inflicted, if at all. A punishment which places the victim in a condition from which he can never be relieved should be visited upon few, and that, too, only upon judicial determination and with greatest hesitancy. The world has had some experience in a darker and less enlightened age with the theory of statutory determination of the fitness of human beings to enjoy the right to life. The committee of Ephors, which sat in ancient Sparta and pronounced judgment unhesitatingly upon infants who were weak or deformed, had ample scope for the exercise of its powers, but civilization has not been greatly the gainer thereby. True enough, they had not the advantages of the scientific knowledge which we enjoy today. But, on the other hand, the passing of the years may bring new knowledge in the future, so that our methods of today may to the future observer and historian appear as crude and unscientific as those methods which sent the Spartan babes to death.

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CHAPTER VI.

EDUCATION.

Seventy-five years ago Dr. Francis Lieber, the first person to apply himself seriously and effectively to the study of crime in the United States, declared in his "Political Ethics" that all his investigations had led him to the conclusion that crime is very much due to the want of fixed occupations. At that time he found but one in seven convicts who had a trade, and this led him to favor trade education as a preventive of crime.

Two centuries ago Milton and Locke, in England, were urging the connection of physical and mental education; while John Ackermann, Salzmann and Franke took the lead in this movement in Germany, as Tissot, Rousseau and Lond have done in France.

At the close of the eighteenth century Dr. Rush, of Philadelphia, recommended the connecting of

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agricultural and mechanical labor with literary institutions, saying "The student should work with his own hands in the intervals of study." The people of Pennsylvania took the lead in this matter, and the Manual Labor Academy was opened, near Philadelphia, in 1829. This was the origin of industrial education in the United States. The next year it was reported that every invalid student who attended the Manual Labor Academy was restored to health.

The Pennsylvania legislature became interested, and in 1832 directed a committee of the House of Representatives to investigate the expediency of establishing a State manual labor academy for the instruction of teachers in public schools. The report of that committee is the first of its kind in American legislative history, and the conclusions reached so well support the modern theory of industrial training, that, to the student of this subject, they are of more than merely historic interest. This committee found:

1. That the expense of Education, when connected with manual labor judiciously directed, may be reduced at least one-half.

2. That the exercise of about three hours' labor daily, contributes to the health and cheerfulness of the pupil, by strengthening and improv-

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ing the physical powers and by engaging his mind in useful pursuits.

3. That so far from manual labor being an impediment in the progress of the pupil in intellectual studies, it has been found, that in proportion as one pupil has excelled the other in the amount of labor performed, the same pupil has excelled the other in equal ratio in his intellectual studies.

4. That manual labor institutions tend to break down the distinction between rich and poor, which exists in society, inasmuch as they give an almost equal opportunity of Education to the poor by labor as is afforded to the rich by the possession of wealth; and

5. That pupils trained that way are much better fitted for active life, and better qualified to act as useful citizens than when educated in any other mode; that they are better as regards physical energy and better intellectually and morally.

Proceeding upon these principles the trade school has arisen and spread throughout the Union, slowly, indeed, and by no means with the sweeping enthusiasm of a great idea, but by degrees it has grown and will grow.

"In order that the school may be useful," writes Lombroso, "not negatively as now, but positively,

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we must change the basis of our education, which at present, by its admiration of beauty and force, leads to idleness and violence. We must place in the first rank special schools for agriculture; and in the other schools we must give first place to manual work, in this way substituting something practical and exact for the nebulous mirages of the antique."

G. Stanley Hall says that of all work-schools a good farm is probably the best for motor development. He comments, also, upon the morally healthful nature of rural pursuits.

"Up to the present," writes Sergi, "the school has debated upon the best way to teach the alphabet, how it is possible to learn to write soonest, and what is the best method of developing the intelligence; but it does not teach us any method of directing our feelings and impulses. . . . In place of increasing the number of classical schools, reduce them to the minimum, and transform all the others into schools of business, arts, and trades, professional and practical schools corresponding to the demands of modern life. Introduce into these schools the cultivation of the intelligence and character needed for daily life; by these means you will cultivate the habit of working, which is in itself a very efficacious education.

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When we have numerous schools of arts and trades, manual labor will be ennobled, whereas now anyone who wants to learn a trade must serve under a master-workman, and learns it by practice more or less badly.

Ferri thinks that an important and effective crime preventive would be the experimental method in the teaching of children, which applies the laws of physio-psychology, according to the physical and moral type of each pupil and that "by giving him less of archæology, and more knowledge serviceable in actual life, by the mental discipline of the natural sciences, which alone can develop in him a sense of the actual, such as our classical schools only enfeeble," we could the better adapt men for the struggle of existence, whilst diminishing the number of those left without occupation. "Many of the causes of crime would be nipped in the bud," says he, "by checking degeneration through physical education of the young."[1]

The effect of the trades and of the practice of the useful arts is in all instances beneficial and without doubt is a most potent element in crime prevention. There are but three modes of gaining a livelihood, although they are masked under

[1] See Ferri: Crim. Soc., p. 131.

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many disguises. They are labor, beggary and theft.

The first thing the Almighty said to Adam when he turned our first parent out of the Garden, was "Go to work!" And, from that day to this, the man who has usually kept out of serious trouble has been the man who found his work and stayed with it. Some persons, to be sure, have called this condition a curse. "Wage-slavery"—I believe that's the term—has also been placed in the same category. But for just this "curse," however, humanity would still be wearing fig-leaves and subsisting upon a diet of bread fruit and bananas.

Nearly three-fourths of the persons found in our penitentiaries are persons unable to earn a living excepting at the most rudimentary form of labor, whose means of livelihood are limited to the most primitive methods, and whose earning capacity is at the lowest possible stage. We find, therefore, the maximum of dishonesty with the minimum of earning power. In other words, men who are not especially skilled in the arts and processes of trade, and who are wholly untrained as to honorable and profitable occupations, are most likely to try to gain a living by unlawfully taking the property of others. Not knowing how to get

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a living honestly, they very naturally try to get it dishonestly.

But those persons who have been instructed in honorable and profitable methods of making a living do not usually resort to the dishonorable and unprofitable methods which characterize the criminal. The majority of the crimes committed in this country are crimes against property, and most criminals, therefore, are, in one sense or another, thieves. There are exceptions, of course; but as a general proposition, they steal who have not learned to work. There is, indeed, no single fact which stands out more conspicuously in the whole range of our criminal statistics, than the very evident one that the vast majority of men who really know how to make a living honestly do not usually attempt to make it in any other way; whereas they who do not know how to make a living at all, are, generally speaking, utterly irresponsible, and, upon the whole, dangerous, for their living is at best unremunerative and precarious, and they are most easily reduced to distress by any disturbance of business or social conditions.

Most criminals are young men, not out of their "twenties." The age of greatest criminality in this country, I believe, is somewhere about the age of twenty-three. Bring a boy to maturity

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PLATE VII.—GROUP OF FORGERS.

(Courtesy St. Louis Police Department.)

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without effective knowledge of useful work, and you will place him in a class which, as the prison records indicate, is the most likely to commit crime, and you have brought him to the age when most men who do become criminals develop the criminalistic impulse. Thus you assure for that boy a double probability of moral delinquency and industrial failure.

"Is the young man Absalom safe?" Well may King David's anxious question be echoed in the public mind today; for, upon the safety of our "young man Absalom" depends the ultimate safety of us all. General Grant once said that what saved the Union was the coming forward of the young men. And the salvation of the Union still depends upon the coming forward of the young men. The waywardness of this "young man Absalom" alone, to say nothing of that of his elder brothers in crime, is now costing us not less than one hundred and fifty millions per annum, and the total per capita cost of crime in the United States is greater than the per capita cost of education. This tremendous disparity suggests a rather humorous incident which occurred in one of John Morley's political campaigns in Scotland. Wilson, his opponent, was making a speech, when he was rather suddenly nonplussed

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by this question from the crowd: "Is Maister Wilson in favor of spending thirty-six millions a year on the army and navy, an' on'y twelve millions a year on education—that is to say, twelve millions for pittin' brains in, and thirty-six millions for blawin' 'em oot?" So long as we continue to expend more money in getting men into the penitentiary than we do in trying to keep them out, we cannot reasonably expect any substantial decrease in crime, and therefore the heaviest drain upon our national resources will continue unabated. Only about one-fourth of our penitentiary convicts are illiterates. Three-fourths of them are incompetents. Illiteracy, as we all know, is highly dangerous to society, but, surely, it is hardly more so than incompetency in the actual business of life.

It will be recalled that the great Athenian lawgiver in the constitution which he prepared for his native city, exempted from the duty of maintaining their parents in old age, all those boys whose parents had neglected to teach them a trade. Society in our day is in the position of the Athenian parent who failed to teach his son a trade; for such boys, as a rule, not only produce absolutely nothing of value to society, but, on the contrary, they very often constitute an actual menace

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to its welfare. The penalty imposed by Solon two thousand five hundred years ago was simply that of a natural law, to which we are still subject, and which we still violate whenever and wherever we permit any boy to grow up with hands untrained for the practical work of life.

Trade schools are cheaper than reform schools, and manual training than convict labor. What are our most modern penal institutions, for the most part, but trade schools for criminals? Rev. W. H. Hubbard, manager of the Auburn Crafts, of Auburn, N. Y., said a few years ago: "As it is today, the criminal boy sent to one of our reformatories has a better chance of becoming a skilled workman and earning larger wages, than the average boy who is not a criminal." If a fair proportion of the amounts which we devote to the training and safe-guarding of criminals were expended in making productive citizens of them in youth, the criminal cost budget would be far less appalling to the American tax-payer than it is today. Judge Ben B. Lindsay, of Colorado, says that "a change in our educational system, whereby our boys would be fitted more directly for industrial efficiency, would do more to reduce crime in this country than all the juvenile courts we could establish." Judge Lindsay's views are

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in substantial accord with those of another juvenile court judge, Hon. Willis Brown, of Salt Lake, who says: "I am indeed a strong supporter of industrial education, not that the lack of it brings children into juvenile courts, but a large class of boys who come into the courts more sinned against than sinning, would never drift into delinquencies if they were kept busy." All careful students of the subject, I believe, will agree with Judge Lindsay and Judge Brown. And there is not a prison warden in the United States who will not concur in the observation of John J. Fallon, of the Blackwell Island penitentiary, that "The statement that the lack of trade is a potent and a permanent cause of crime, is borne out by all close observers of penology."

If it shall be said that these views are addressed to the commercial instincts, or that this appeal to the practical side of the matter is too nearly allied with the material as contrasted with the spiritual and æsthetic, let us, for the moment, abandon the purely material viewpoint, and consider the question from the standpoint of mental and spiritual growth alone. I not only affirm that muscle control and development are positively indispensable to the development of the brain centers, but I deny absolutely that there can

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be any normal degree of moral and intellectual development without a fair degree of manual and physical training. An educational system that clings to the idea that the special senses are the only avenues to brain development utterly fails to take into account the plainest facts of physiology. The fundamental principle in brain development, as Dr. Lydston says, is the fact that the brain, like every other organ of the body, within reasonable limits responds to stimuli by growth and increased functional activity and power; and exercise of any of the sensory or motor faculties, therefore, produces improvement in the nutrition of the corresponding brain area, and, incidentally, of the entire brain. In this way proper exercise of the muscles improves the development not only of the motor centres but also of the fore-brain. We know that atrophy follows disuse of any of the brain centres, and this, as the authorities point out, has been demonstrated by the examination of the leg or arm centres at some time after amputation of those members.

It thus appears that perfect mental training, without correlative manual training, is a physical impossibility. It necessarily follows that perfect *moral* development, in the same circumstances, is likewise impossible. No man who will not work

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can possibly be a good man. In this connection there comes to us from South Germany the story of an old Franciscan monk, who lay dying in his cell. For the greater part of his life he had been the tailor of the monastery. In his last moments he asked the attendants at his bed-side to bring to him his "Key of Heaven." They brought to him a prayer-book of that name. He shook his head. They brought a crucifix, and other emblems sacred to his religion, but still the old monk shook his head. Finally one brought to him his needle, the needle with which he had wrought so long and so well. The old friar clasped it to his bosom, smiled, and peacefully passed away. It was his "Key of Heaven."

And so it is with regard to every honest, useful work. There is no other key to permanent happiness. It is, indeed, the "Open Sesame" that unlocks the door to all things that are really worth while. For honest work is worship, and "faith without works is dead." The old saying that an idle brain is the devil's workshop is literally true, and I would add to it, that "Idle hands are the devil's tools." Let us take from the devil his tools. Close the devil's workshop, and you will close the prison doors to the great majority of young men who are daily donning the felon's garb. This is the

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"closed shop" that will close the principal avenue to crime.

The movement in behalf of industrial training is not merely a materialistic proposition. There is an ethical side to the utilitarian movement in public education. There is no surer foundation for an honest, upright character, than that supplied by honest work. Diligence in useful service is the foundation of every moral code. Zoroaster taught the ancient Medes and Persians that the tillage of the soil was a *religious* duty. The laws of the ancient Jewish doctors enjoined the learning of some mechanical art, as well as the study of the law. Not faith alone, but also "works," is the basis of the Christian system. No man can be good who is not useful, and no man can safely and truly enjoy where he has not earned.

Sir John Lubbock relates an old Hindoo tale in which Ammi gives to his son an acorn. "What see you there?" asked the sage. "An acorn." "Very well; open it, and tell me what you see." "I see nothing," the youth replied. "My son," said the sage, "where you see nothing, there dwells a mighty tree." A superficial view may disclose no alarming symptoms in an ordinary idle boy; he may be regarded, perhaps, as a kind of negative character, a ne'er do well—at worst, a good for

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nothing, harmless sort of fellow. But, where the casual beholder may perceive nothing, there dwells a mighty growth; there dwells the frightful germ of crime; a hideous, cancerous growth that is eating out the nation's heart, wrecking tens of thousands of happy homes, and costing, in every decade, as much as a civil war. Yes, the idle boy is growing, always growing; it is the law of nature. Every child will develop along honorable and useful lines, or the contrary; he will approximate the grand, the good, the beautiful, the true, or he will become an instrument of evil, the vehicle of misguided passion and the victim of folly—but grow he will, and must.

Shall we send the boy to school? By all means. But let us send the *whole boy* to school. Our educational system is pitifully warped, narrow and one-sided. The latest bulletin from Washington advises us that juvenile crime is on the increase; and, according to Dr. G. Stanley Hall, in his great work on "Adolescence," wide-spread youthful criminalism is in and of itself a concrete expression of educational failure. It has already been shown that normal brain development is impossible where physical training is neglected. And it is well that this is so; for, if it could be done, it would be as absurd to develop naught but

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the head in one man as it would be to develop in another man hands of undue proportion, or feet of abnormal size. What the world needs, and what America most needs today, is not abnormal development of any kind, but well-balanced men; men of symmetry, force and poise; not brilliant cranks and neuropaths, but men of even temperament, who can move forward with dignity and strength in the world's work, and who can meet the duties of life with patience, intelligence, persistence and courage, with capacity and unbending will for the work that lies ever immediately at hand.

I believe in the humanities. I revere the classics, and would by no means exclude them from the curricula of our schools and colleges. Far be it from me to suggest the banishment of those refinements and adornments which have ever followed in the wake of polite learning in every polished age. But the structure of human character cannot be made beautiful until it first be made durable. The true adornments of the soul are not the rainbow tints that fade away with the passing of the mist. In vain shall we prepare our youth for the enjoyments of life while ignoring the practical work of life. Let us not take from youth its visions, from boyhood its dreams; but

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while we are filling the American boy with visions of the future glories and possibilities of American citizenship, let us not neglect to equip him for the humble and the ordinary though vastly more important duties of life. We teach our youth that every boy in America may possibly be president of the United States some day, when we know that, as a matter of fact, but eight men, in the ordinary course of events, can reach that office in a single generation. But the country is not so badly off for presidents; nor politicians, either, for that matter—we have had a few of both that we might have gotten along without. Why not point the boys to the honors that lie in other spheres? We could get along very nicely with an exceedingly modest proportion of our so-called great men, if we could only depend upon the average man to do well his work, and to stay on the job.

In those industrial operations which constitute the basis of our social activities, as in military operations, the point of chief concern is not alone the brilliancy of the generalship. It is the equipment and general efficiency of the rank and file that count. No military triumph was ever won by "the thunder of the captains and the shouting." And so, with us of the United States, industrial supremacy can never be either achieved or main-

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tained alone by those great captains of industry, those mighty commercial giants, who have arisen so conspicuously among us. We must ultimately depend upon the general efficiency of the rank and file.

American industrial supremacy today is said to be threatened by monopolies, by freight rebates, by tariffs, by faulty schemes of currency, and what not. But the gravest menace which confronts American industry today is none of these; it is the threat of growing inefficiency on the part of American labor, as compared with the increasing industrial efficiency of the labor of some foreign countries, notably that of Germany. A recent report to the manufacturers' association declares that "A majority of the manufacturing plants and workshops of our country have workingmen educated in Germany as superintendents and foremen." With the old apprentice system all but abolished, it may be in an effort to create an artificial scarcity of labor, and with trade schools so few and remote and impossible of access to the children of the laboring poor who need them most, the American boy is in many instances totally debarred from that most sacred right of any citizen, the right to learn an honest trade. I have seen a letter from an eighteen year old boy,

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asking that he be sent to the Missouri State Reform School in order to learn the trade he desired to enter; knocking at the gates of a penal institution of the State, and seeking there the opportunity which had been denied to him elsewhere. Is it any wonder that over ninety per cent of the young men sent to our reformatories are found to have been wholly without previous occupations? Are we astonished to learn that the majority of the convicts in our penitentiaries have had no settled occupation?

They who have looked behind social phenomena to discern and search out the causes of racial development or degeneracy, are well aware that race deterioration is the sole and the inevitable alternative of race education. As Samuel Royce said, some thirty years ago: "Neglect man's moral training, and he becomes a monster. Train him exclusively for industry, and he becomes a machine. Train exclusively his moral faculties, and he becomes a zealot. Train exclusively his intellect, and he becomes an iceberg or a heartless villain. Thus, a one-sided education spoils a man, and makes of the intended king of the cosmos a maniac, pauper, criminal or villain." Statistics show that one in every three hundred and twenty persons in this country is now insane, criminal or

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pauper. How many of the rest of us are villains I am not advised, but we must all admit that the provocation is certainly very great. At any rate, we are all paying the penalty, and the sins of the fathers are being visited upon the children, even unto the fourth generation; and the rain continues to fall alike upon the just and the unjust, only the unjust usually has an umbrella, even if it does belong to somebody else.

And how shall we escape or minimize the burden? The trade schools alone will not suffice. Only about twenty-five thousand are now attending the trade schools. And these schools are so few and far between, and the cost of attending them so great, that but an infinitesimal proportion of our youth may ever hope to reach them. The system should be broader. The rudiments of industrial training are now begun in the kindergarten. Why not carry some measure of industrial training through all the grades of the public schools?

One hour a day, in every school room in the land, would give to every man, woman and child of the next generation at least the rudiments of an honest, useful and profitable occupation, would give to all who wanted it a trade, and would make of the next generation of Americans the most pro-

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ductive and industrially the most efficient race the world has ever seen. Industrial education is well worth the experiment. Surely, an hour a day is not too much to ask for this great purpose, yet it would be sufficient; and the venerable "three R's" of our educational system could well afford so small a sacrifice in so great a cause. No rich man's son would be the poorer, while every poor man's son would be incalculably richer, with the knowledge that this hour would give. Therefore I would advance, as the true ideal of a school system that aims to benefit all and as a most potent influence on the prevention of crime, the education of the *whole child*—heart, hand and brain; useless, each, without the other, and susceptible alone of normal development when all are jointly trained.

Every nation that has ever lived and died, has died because it didn't know how to make a living. Egypt carved her splendid monuments with an artist's hand and the colossal grandeur of her architecture has never since been matched; but although she could shape the obelisks, build the pyramids and read her glory in Elkarnack's lofty hall, she could not make a plow, and in the shadow of the Pyramids and among the tombs of the Pharaohs her degenerate sons are still turning

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the world's most fertile soil with a crooked stick. Greece filled the world with her syllogisms and her songs; she breathed upon the rough block of stone and forthwith it sprang into chiselled symphonies of unapproachable grace and beauty; but, though counterfeiting life, she knew not how to live, and

"storied urn or animated bust"

record at once her glory and her doom. The eloquence that "fulmined over Greece to Macedon and Artaxerxes' throne," could move brave hearts to deeds of honor and renown, but it could not call up the forces of Nature to do the will of man. Xerxes the Great cast fetters into the sea in token of his conquest of the deep, but in the straits of Salamis the waves mocked at his pride, and for twenty centuries the jackals have howled and the owls and bats have hovered among the broken monuments of his wasted power. Rome could conquer nations, but she could not feed them; and, gorged with riches, she starved to death in the Edens of ancient civilization. If we of the modern era may claim any really effective superiority over the civilizations of the earlier day, it is the superiority of industrial efficiency. In proportion as we have learned to work, learned to do more work and better work, just in that pro-

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portion have we advanced in our civilization, laid deep the sure foundations of personal happiness and social security, and paved the way for a larger and a better growth.

In the later period of Greece, as well as of Rome, the trades were despised as the fit occupations of slaves alone. Even Aristotle[2] did not think it wise to intrust the affairs of government to tradespeople. Among the Boeotians men who defiled themselves by commerce were for ten years deprived of the right to hold public office. In Rome, Augustus condemned a senator to death for engaging in manufacture.

For nearly a thousand years despotism, slavery and armed superiority have been slowly receding before the sobering and law-abiding spirit of industry. It was the tradesmen of the middle ages who builded the fortified towns and founded modern liberty. The Italian Republics, the cities of the Hanseatic League, the prosperous towns of the Netherlands, were monuments to the Craft and Guild, and to the rise of the industrial classes Europe owes her modern institutions.

Here lies the duty of the state—to teach the means of sustenance and growth. But, regardless of what the state may or may not do in the

[2] Polit. Eth.

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matter of industrial training, the father and mother can and they should in so far as may be possible, teach the child to know and love his work. "In this regard," Lombroso says, "the family can accomplish far more than the teacher. . . . Yet with us the family relies upon the school for the care of education, while the schoolmaster, for his part, who in any case could do little because of the great number of pupils demanding his attention, counts upon what the family is supposed to accomplish. Thus both remain inactive just where crime could be most effectively prevented. The family-public does not realize that into the integration of the state and the destination of the child, vocation and aptitudes enter as exponents and the lack of intellectual preparation as a coefficient; and that to obtain the integration there is needed the union and the continuity of all forces, including those for whose development the parents most earnestly strive."

Not once, but many times, has the typical gray-haired father stood before me, his head bowed with sorrow and shame, pleading for the pardon of his wayward boy. And the story has usually been the same—

"He had a good home, and a Christian mother. I gave him a fair education. There is not a drop

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of criminal blood in his entire family. He is the first of his name to wear the prison stripes. He is not a criminal at heart—it is not in him; it was cigarettes, drink, bad habits, bad women, bad companions."

True? Yes; every word of it. But it was not all the truth. The boy had never really learned to work. He had not learned the meaning of work. He may have had a job. He may have stayed in a shop, or clerked in some store or bank. But he had two masters. He loved the one and he hated the other. His heart was not enlisted with his hand; there was no joy in his task; his soul was not in his labor. Therefore he knew not work, and he did not work; he only half-worked.

A boy does not always work when he swings a hammer or balances a set of books. If he can find no joy in his task, if he shall come to look upon his employer merely as a boss and upon the day's duties as a period of slavery, from which relief comes only after business hours—he does not work, he shirks. To such a boy, the wine-cup will be a temptation. He will seek his relief in dissipation, and will soon be found, with others of his kind, evolving schemes for getting rich quickly, and without the usual drudgery. He may gamble, he may play the races, or what not. He

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is deeply imbued with the idea that the world owes to him a living; and the more he ponders the subject the less scrupulous he will become as to how he gets that living. He does not think of what he owes to the world; of what he owes to his parents, his country and home. He has no respect for property rights, and soon comes to regard all legitimate business as a graft. He may end in forgery or embezzlement, if in nothing worse; but whatever the course he may take, the general tendency is downward, and the penitentiary is yawning to receive him.

"Tell me," said an old church deacon, his voice quivering with grief as he discussed the case of his own convicted son—"tell me why it is that the sons of preachers and deacons always turn out so badly!" They do not always turn out so badly, I advised him, but they are not exempt from the operation of those laws which govern human nature. A boy may be apparently schooled in creed and dogma, and still fall. In all such cases, there is the same vital defect in the boy's education.

The joy, the beauty, the utility, the everlasting glory of honest work and the eternal disgrace of indolence—these should be among the first lessons impressed upon the youthful mind, and the

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father who so instructs his son at home may save the State the trouble and the expense of attempting to do so later, under circumstances rather more adverse. The boy who is taught to love his work for its own sake, who learns to excel in it as a matter of pride, and who thinks more of what he owes to the world than of what the world owes to him, will not long be without an honorable, a useful and a profitable occupation. Whether he be carpenter, machinist or electrician, in whatsoever line of useful activity his energies may develop, in all human probability he will continue to ply his trade. His mind will be occupied with the pleasures and the duties of his calling, and, so occupied, he will pass by the idle and the dissipated at a time when, as experience has shown, the human mind is most susceptible to those influences which make for crime. The prisons are not made for that boy, and you will not find him there. Teach the child to thoroughly understand his work, and he will love it. Once he comes to know that meaning in all its fullness and its truth, once he grasps the sweetness and the glory of a well-loved task, the boy is safe; you need feel no concern as to his future; you have saved the boy from failure and from crime.

Let the child be taught that idleness itself is

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crime. The boy who dreads his task, who shirks useful service, is developing the germ of criminality. It is no answer to this to say that such is the disposition of most boys. Perhaps it is, at some period of their youth. All very young children are essentially criminal by nature, but with proper training and environment they will speedily overcome all such tendencies. If such be the disposition of most boys, it is also true, most fortunately, that most boys do overcome it; and woe be unto those who do not.

Indolence, procrastination, shirking, half-work —through these a boy first learns to steal, for indolence itself is fundamentally dishonest. It is the very tap-root of crime. The boy who habitually steals time from his employer is in a fair way to steal something of more tangible value. He covets that which he does not earn. He does not recognize his obligation to give to his work the best that is in him; to give to the world service for service—and to give it first. In short, he has not learned to work. He is not interested in the task before him, in the business immediately at hand. His mind is elsewhere—in dreams, perhaps—but, beyond the dream, there lies the shadow of the iron bars.

"Just as the twig is bent the tree's inclined."

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As the Biblical sage observes, "Train a child in the way he should go, and when he is old he will not depart from it." The child-idler is simply the adult idler in the making, and, in about seventy-five per cent of the cases, the adult idler is the criminal.

If the habits formed in youth may be regarded as in any sense an index or forecast of the character of the adult, then, in the light of the criminal statistics, the problem of child-idleness may justly lay claim to at least some measure of the dignity and importance so freely accorded the much-mooted problem of child-labor; and before making it impossible for the youth to acquire practical (as well as theoretical) knowledge of gainful pursuits, we should reckon the latent dangers that lurk within the possibilities of a generation brought up without effective knowledge of useful work.

To be sure, it by no means follows that, in teaching the child to work, his powers should be taxed beyond their capacity. To do so would be inhuman in the extreme, and as unnecessary as inhuman. The labor of the child should never proceed beyond the limits of healthful exertion, and that, too, within surroundings carefully safeguarded with respect to morality and sanitation.

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But he should be taught and made to understand his obligation to serve, inasmuch as he is served; to give, as he receives; to bring to the world as he takes from it—and he should be taught the means of performing that obligation. With such an education he will be both able and willing to fashion with hand or brain, and he will go forth to his duties in the morning of life, feeling, not that the world owes to him a living, but that he owes to the world a life.

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CHAPTER VII.

Social Amelioration.

No scheme of social betterment which fails to include economic justice in its fundamental concept can hold forth a possibility of effective relief or justify the hope of enduring reform. "History, statistics, and direct observation of criminal phenomena prove," says Ferri, "that penal laws are the least effectual in preventing crime, whilst the strongest influence is exercised by laws of the economic, political and administrative order." We shall never be able through exercise of social activities to do for man as much as he can do for himself through his individual activities when left free to employ them. Civilization is not a hot-house plant. Its growth cannot be forced. Its development has been most rapid where freedom has been greatest and license has been least; and where freedom has

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PLATE VIII.—DEGENERATE MURDERERS.

(Courtesy St. Louis Police Department.)

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languished, where liberty has been shackled, civilization has halted. Man must be free. His faculties must have freedom to develop and they must have an unrestricted field of opportunity in which to exert themselves. In proportion as he is denied the absolutely unrestricted freedom of opportunity to live, to labor and to grow, the faculties of man are dwarfed, his mind is cowed, his ideals shrunken, his social powers and capacities are atrophied, and he approximates the savage and the brute. Legalized privileges which give to one man or group of men opportunities which are denied to all men tend to breed and accentuate class distinctions and to divide society into governing and dependent classes. It is plain that a self-governing society cannot long exist upon that basis. It will degenerate into absolutism by means of oligarchy, monarchy, or the mob.

All history shows that there may be despotism without monarchy, and that absolutism may exist under the guise of freedom. The subjects of a monarchy may not seldom enjoy a liberal measure of freedom, while the most degrading tyranny may at times be enacted under the forms of a nominally free government, in the name of freedom and by sanction of law. Where men do not

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enjoy equal opportunities there cannot be freedom. I have heard a man, vain in his rags, boasting of his liberty, when in point of fact he had no more real liberty than a Spartan helot, bound to the soil and doomed to a life of servile drudgery for the bare means of existence.

In most minds the idea of slavery is associated with that of manacles, chains and other implements of physical restraint, and men are apt to think that where these outward insignia are lacking slavery does not exist. But, the more we observe the so-called free nations of the world the more irresistibly are we drawn to the conclusion that it is extremely hazardous to attempt to measure the degree of freedom existing in a nation by the high-sounding phrases of constitutions and political platforms. In the United States, for example, there are today more vagabonds and paupers than there were men, women and children during the war of the American revolution. The biologist may be satisfied to classify these people merely as "degenerate types." But that does not solve the problem they present. They are, as James H. Hammond said of another class, in a speech delivered in the United States Senate in 1858:

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"The very mudsills of society. . . . We call them slaves . . . but I will not characterize that class at the North with that term; but you have it."

Nearly seventy per cent of the American people are homeless—but they don't know it. They are renters, mere tenants by the courtesy of another, owning no land and having no right to a foot of the soil. Perhaps we should not say "homeless." Possibly it were well, like the genial and amorous Sam Weller, to use some "more tenderer" word. Let us, then, substitute "non-home-owning." The percentage of non-home-owning bread-winners in some of the larger cities of the Union is as great as ninety-five per cent. In view of these conditions how strikingly apropos are the words of Galusha A. Grow, spoken in the American Congress September 30th, 1852:

"It is in vain you talk of the goodness of an 'Omniscient Ruler' to him whose life from the cradle to the grave is one continued scene of pain, misery and want. Talk not of free agency to him whose only freedom is to choose his own method to die. In such cases, there might, perhaps, be some feeble conception of religion and its duties—of the infinite, everlasting and pure; but unless there be a more than common intellect,

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they would be more like the dim shadows that float in the twilight. If you would lead the erring back from the paths of vice and crime to the paths of virtue and honor, give him a home—give him a hearthstone, and he will surround it with household gods."

In a speech by Robert Toombs, of Georgia, delivered at Boston in 1856, the following quotation from President John Adams was used in argument to show that the black slavery of the South at that time was no worse than the white slavery of the North:

"What matters it whether a landlord employing ten laborers on his farm gives them annually as much money as will buy them the necessaries of life, or gives them those necessaries at short hand?"

There can, indeed, be but little difference. This is plain upon the slightest reflection. The same thought was expressed by Schopenhauer[1] when he wrote: "The difference . . . between the serf, the tenant, occupier, mortgagor, etc., is more in form than in fact. Whether I own the peasant or the land from which he must obtain his nourishment, the bird or its food, the fruit or the tree, is practically a matter of small importance."

[1] Parega and Par., vol 2, sec. 126.

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Although universal suffrage may exist, the man who dares not vote contrary to the will of his employer, is certainly circumscribed by lack of freedom of action or of will, and has as little actual voice in the government as he would if completely deprived of the elective franchise. The man who is obliged to pay tribute to monopoly is certainly in bondage. The man who is required to do the will of a master in order to obtain a living for himself and family, is most assuredly in a state of subjection to the will of another. What is this, if not slavery? Whoever must beg employment as a boon, who is not at liberty to choose either his labor, his wages or his employer, and whose political acts are dictated by the man who gives him work to do, is as much a slave as though his person were the property of another. You do own my body when you control the means whereby I live.

But the black slave of America, sixty years ago, was at least sure of his board and clothing, and of medical attendance when sick. The industrial serf of the present day is not valuable enough to receive such attention, for when he dies, or becomes disabled, there are too many to be had for the asking. And, to render his condition still more distressing, the white slave is tantalized by

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the sight of that freedom which he is told belongs to him but which is always just beyond his reach; like the poor wretch whom Verres crucified in plain view of the Italian shore, that he might in the last agonies of death behold his native land of liberty and draw fresh torment from the thought that he, a Roman citizen, was helpless beneath the very shadow of his country's laws.

Let it be remembered that man can receive but one thing in exchange for liberty, and that is slavery; and no man can be wholly free while his neighbor is partly slave. The taint of involuntary servitude affects us all.

That there may be equality of servitude does not alter the case, although, it must be admitted, equality is a word to conjure with. Accordingly as it may be construed, it may imply a just balance of private rights and governmental powers, or it may imply a socialistic absolutism, or mob law, or monarchical despotism. It has stood for more and for less, and it has done more harm and more good, perhaps (in one way or another), than any other one word in use during the past one hundred and fifty years. Deriving its first political significance from Rousseau, it has ever since been the catch-word of the charlatan, the hope and de-

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spair of nations, and the will-o'-the-wisp of popular discontent. Equality may, in its political application, mean everything or it may mean nothing. But there are very few, indeed, who have mouthed it as a political creed and have at the same time accepted the theory of human equality as to duties and responsibilities as well as to rights; that is not the popular doctrine.

We talk vaingloriously of the equality of political status; of the equality of civil rights; of the equality of opportunity. The first exalts the shiftless and unlettered brute to the same plane of sovereignty with the wise, the useful and the good, gives ignorance a vetative power over intelligence, and lowers the general average of citizenship; the second guarantees rights without enforcing responsibilities; and the third, equality of opportunity, without further elucidation, is meaningless and misleading. Equal opportunity to labor and enjoy the fruits of labor, to freely develop the best that is in us and to fully enjoy the results of that development—that were indeed a glorious ideal. But it is by no means guaranteed by an enforced equality of social condition, nor by equality of civil rights without their naturally and logically attendant civic and

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moral responsibilities. Equality of opportunity cannot be realized so long as law-made privileges exist.

That glittering and magical revolutionary device, "Liberty, Equality, Fraternity," has long been a favorite implement of the demagogue. It tickles the ear of the populace. It is emblazoned on the banners of every popular crusade. It is the talismanic emblem of tribunitian power. A French political dictionary published in 1848 said: "Liberty is equality and equality is liberty." This was the idea of the first revolutionists. They did not perceive the distinction, as did the first Napoleon, who said: "The French love equality; they care little for liberty."

Men are prone to forget that there may be equality without liberty. Wherever there exists unlimited and unbroken power, which may be immediately exercised without check, whether such power be vested in a single man or in an absolute democracy—there liberty cannot exist, although there may be equality. Whatever may be said by humanistic writers in deprecation of the inequality of men, we must admit that there is an essential difference in the worth and quality of men; a very great disparity in their capabilities, both physical and mental. The earning capacity of one

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PLATE IX.—TYPES OF FORGERS.

(Courtesy Kansas City Police Department.)

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man being greater than his fellows, shall we say that he is not exclusively entitled to the fruits of his industry? May we justly require him to sow that others may reap? To do so would be to permit the most ignorant to fix the standard of efficiency and the most indolent to fix the standard of industry. It is especially important, therefore, that society refrain from the bestowal of gifts in the form of privileges from which the masses of men are debarred. This is, in effect, giving to one person something which he has not earned. When you do that you substract, to that extent, from the potential earnings of another. The person so wronged is robbed—howbeit, by the subtle finger of the law. When you bestow upon one person opportunities denied to another you subject that other to an undue burden, and you have handicapped him in the race of life. Conceding the postulate that all men are endowed by nature with equal rights to life, liberty and the pursuit of happiness, it must follow that when society adds to that endowment some special right, privilege or opportunity from which the majority of men are excluded, they who are so excluded are by that act denied somewhat of the natural heritage of men. Special privileges are always paid for; if by the holder, and to the full extent of their

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value, then they lose their character as special privileges; if by the non-holder of the privilege, the non-holder is mulcted in the sum of whatever profit may be derived by the holder of the privilege solely as a result of the privilege. The State has nothing to give. Considered merely as an organized government it can possess nothing beyond what it derives from the property of individuals, and therefore it can give nothing to any individual excepting (1) the property of some other individual or (2) the power to take the property of some one or more individuals. Thus, if a tax be levied upon one industry and another be exempted, both being in competition, the unburdened industry is, in effect, receiving a profit at the cost of the other. In this way one class of people may be elevated to opulence, while another class, existing under the same government, may be reduced to a condition of involuntary poverty approximating serfdom. Inequality of industrial opportunity is often, if not usually, due to these inequalities in the distribution of the burdens of taxation. Such inequalities contravene the laws of economic justice and render exceedingly difficult, if not impossible and entirely abortive, all intermediate efforts at social improvement.

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While it is not to be doubted that the utmost possible degree of perfection in the laws and forms of government would by no means elevate to a state of moral perfection the citizenship subsisting under that particular government, it is also true that a thoroughly vicious, unwise and unjust government, if it be allowed to long exist, will certainly breed the like impure conditions among the people. Vice alone contaminates; good principles are not so contagious. Governments, however, are usually fairly representative. They are typical of their constituent elements. The private life of a nation is usually reflected in its public life. No form of government, however just, will serve as a substitute for the virtue and integrity of the people. A righteous people will destroy or reform a vicious government, but no government can, of itself, reform a thoroughly vicious proletariat. That work is for the people to do. Reforms should begin at home. The "social uplift" should be preceded by the individual uplift. The personal will to do right is the one condition precedent to all social and economic justice. But we are not for these reasons to conclude that society can do nothing to improve the hard conditions of the unfortunate. Far from it. To so conclude would be to confess the total failure of all

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social organization, to repudiate the social instinct among men and to thus impeach the laws of nature. Public efforts at social amelioration are but the natural and legitimate expressions of the individual conscience, voicing itself through the social organization.

The author confesses to a degree of skepticism concerning the efficacy of those remedies which do not strike directly at the heart of the social problem, but he does not for that reason condemn the various social and philanthropic schemes which, through municipal or State law or by reason of individual or organized charity aspire to mitigate, in some measure, the sum of human suffering and to better the conditions of the human race. However, neither public largess nor private charity can breed in the mind of the average man an innate respect for law nor a wholesome regard for any government which he knows to be incompetent or corrupt.

The difficulties to be met with in this respect are much the same throughout the world, and these difficulties have existed in ancient as well as in modern times. Demosthenes described them in Athens, in his Third Phillipic. Sallust depicts the same conditions among the Romans. Writing of Italy, and after mentioning the evil conditions

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which previously existed under a more despotic government, Lombroso[2] says: "Today the evil is so much the greater, as the deputies and senators are more numerous and hence more dangerous than kings. It is easy to understand why they are more dangerous. In the electoral contest it is not intellectual qualities, and still less moral qualities that decide the victory. Far from it! The man who has new ideas simply dashes himself against the stone wall of the people's conservative prejudices. He who, with a free conscience, points out an evil and proposes a remedy injures the interests of some powerful voters. The respectable man who does not combat abuses openly injures no one, but he also accomplishes nothing; and all run the risk of being submerged by the mediocrity which satisfies the world with an insignificant program, or by the brazen and corrupt who buy the needed votes." The Italian criminologist then pleads as a remedy for these conditions that: "The largest liberty must be given to the press. In the present state of things the guilty not only cannot be accused but, if they are accused, find a new resource in their own crime; and they can, at the expense of honest men and with the aid of the law itself, indemnify them-

[2] Crime, etc., p. 263.

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selves for the efforts which honorable men make to expose their misdeeds."

Says the same author: "One of the reforms that would serve best to check political corruption would be an extensive decentralization. When a government, centralized like the Italian or the French, has the right to administer enormous sums and manage affairs involving billions, as in many of our public works, corruption inevitably arises, because the control of the public is no longer actively or directly exercised and a wider door of impunity is left open. But if, on the other hand, the public business has to be transacted in broad daylight under the eyes of all, the control will be more efficacious, and those weak persons whom money might corrupt will find in the publicity of their acts a means of resisting evil." In his opposition to the centralization of power the views just expressed coincide with those of Herbert Spencer, who said: "The future of society politically lies in decentralization." Ferri[8] also pleads for decentralization of governmental power as a preventive of political corruption, and likewise urges the principle of the referendum for the same reasons. Lombroso's advocacy of the referendum has been previously

[8] Crim. Soc., p. 125.

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noted (See Chap. II.). A number of American statesmen, among them the present Secretary of State (Mr. Byran), President Wilson, and a former President, Mr. Roosevelt, have advocated the referendum for reasons similar to those expressed by the Italian authors quoted. There is no doubt that both the initiative and referendum operate as wholesome safeguards against legislative corruption. When the people are given the power to intercept the enactment of a law there is less probability of the legislative enactment of laws for corrupt purposes or from corrupt motives. The incorporation of the referendum in the organic law of all municipalities would tend to prevent the wholesale trafficking in franchises, which has disgraced so many cities. It would then be impossible for the legislative branch of a city government to grant special privileges to private interests unless a majority of the people desired it, for the people would always be able to intercept the grant, and would in most instances do so if convinced that a grant had been corruptly, inadvertently, or improvidently made. A number of American states have incorporated the initiative and referendum in their constitutions as an additional check and balance upon the legislative branch of the government.

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This principle, however, cannot operate to deter executive officers from unrighteous acts. For this reason it is being supplemented, in some of the States, by laws which provide for the recall of any public official whose acts are not satisfactory to the people. A liberal application of the principle of the recall would rid the public service of many corrupt, incompetent and undesirable public officials. It should, however, in some cases, at least, be applied to appointive as well as to elective officers. This would require every public officer to stand upon his own merits, and would make it impossible for a public or powerful appointing officer to shield an inefficient or dishonest subordinate. But in dealing with these questions it should never be forgotten that no system of government has ever yet been devised which will protect the public from the legitimate consequences of public indifference, ignorance or vice.

I find little to hope for in a further extension of the suffrage. The French once thought that public suffrage meant popular liberty. This was especially true of the first revolutionists. But they afterwards learned how little we may expect from an electorate governed by ignorance or swayed by hysteria. Advocates of the feminine suffrage,

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it is greatly to be feared, are unduly optimistic in their promises of the benefits which are to flow from that reform. In the American states having general or limited female suffrage there has been no discernible decrease in crime nor any great purification of politics because of that reform. At any rate, the social good to be derived cannot, in the end, compensate its necessarily damaging effect upon society.

If the human race is to continue its existence, the vast majority of women are destined to become mothers. The biological objections to the public activities of women thus become readily apparent. During the period of gestation and the nursing period beyond (which periods comprise at least one-third of the life of the average woman), there should be admitted no new conditions which in their nature tend to aggravate the feminine predisposition to hysteria, unless we desire to very greatly augment the birth of neurotic offspring. The excitement of political conflict should not be added to the natural and unavoidable burdens which attend upon maternity—unless we desire to greatly increase the race of neuropaths. This may be an indelicate view of women's sacred right to "political emancipation," but future generations likewise have some sacred rights, and

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one of them is the right to be born without the taint of nerve degeneracy. In the proper development of the human race no concern is of more vital importance than the *breeding conditions* of the human family. No scientist will affirm that motherhood is the absolute duty of every woman born into the world, but that this function has always and will always fall to the lot of most women none will deny. In view of this certain and established fact we should not hesitate to regard the realization of universal female suffrage as almost an unmitigated evil. Nor does this view militate against any possible broadening of woman's sphere of usefulness. The exercise of the ballot is by no means essential to the exercise of woman's power for good.

Students of English history know that the real ruler of Great Britain during the reign of George II., was Queen Caroline, and that she was one of the most sagacious counselors that ever gained the ear of a British sovereign. We know what the companionship of Josephine was worth to Napoleon. Gibbon says that the laws of Justinian were attributed to the sage counsels of his remarkable wife, the Empress Theodora. When we remember that Surrey had his Geraldine, Dante his Beatrice, Sidney his Stella, Tasso his Leonora, and

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Petrarch his Laura, we must know that literature has owed many of its finer inspirations to the influence of women. Could the ballot have yielded a larger sphere of influence? All history is filled with the names of wondrous women.

In the dim twilight of the human story, where the horizon of recorded fact hovers above the mist of fable, we find the legendary Semiramis, queen of the Eastern plains, who gave law to the fathers of Abraham. Sweeping down the ages, on the same sunny plains of Mesopotamia, we find a Median princess, sighing for her native mountains, and her wishes bringing forth the hanging gardens of Babylon; and in the West, where the curtain of fable was more slowly raised, we behold Helen and the ruins of Troy; and Dido, whose empire began in a trick and ended in a tragedy. Athens emerges from the land of myth, with the beautiful Ariadne, leading Theseus from the labyrinth. And Greece passes, with her Aspasia, her dancing girls and her songs. Enter now the Romans. One name is enough to glorify the womanhood of ancient Rome—Cornelia, the mother of the Gracchii. But the old order changeth; Roman statesmen succumb to the witching beauty of the Nile—fair slave of passion and of

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power—and Cleopatra kissed Anthony's empire away. And then comes another age, with its deluge of blood and darkness, with here and there a figure, like Zenobia, queen of the East, a flower blooming in the desert; and follow now the sainted women of the church, whose lives illumine the circumjacent gloom even as the Christian candles glimmered in the catacombs of pagan Rome. In a note to chapter sixteen of Gibbon's Rome, it is said that the Goths owed their first knowledge of Christianity to a young girl, a prisoner of war, who continued her exercises of piety in the midst of them.

Approaching the modern era, we find the stage of history ornate with the glory of womanhood, ennobled by her toils and sanctified by her sacrifices. Here we find Joan of Arc, the shepherd maid of Domremy, sweeping like an archangel o'er the battlefield to save the crown of her beloved France; and there is the illustrious Isabella of Castile, defying the doubts of men, and pledging her jewels to give ships to Columbus; and here is Madame Roland, high-priestess of Freedom, tearing the mask from the cruel face of Anarchy, and going to her death with the cry "O Liberty! what crimes are committed in thy name!" while yonder we behold Maria Theresa, hold-

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ing aloft before the Diet of Hungary her infant son, and kindling within the hearts of her people a spirit that saved the throne of Austria, firing the souls of all, until

> "The fierce Croatian, and the wild Hussar,
> With all the sons of ravage, crowd the war;"

and later, through a rift in the clouds of battle, like a rainbow gleaming above the storm, we catch a glint from the aureole of Florence Nightingale, "the Angel of the Crimea."

When Madame de Stael challenged Napoleon to name the greatest woman in the world, he replied: "She, madame, who has borne the greatest number of children." I should have agreed with him fully had he said: "She who has been the best and wisest mother." The mother of Napoleon, like the mother of Washington, was a woman of great good sense and force of character. Abbott, in his "Life of Napoleon," says that "When, at the command of Napoleon, the church bells began again to toll the hour of prayer on every hillside and through every valley of France . . .; when the young in their nupitals and the aged in their death were blessed by the solemnities of gospel ministrations, it was a mother's influence which inspired a dutiful son to make the magic change which thus, in an hour, transformed

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France from a Pagan to a nominally Christian land. Honor to Letitia, the mother of Napoleon!"

What we owe to the great men of the world, we owe primarily to their mothers. The history of the human race is twined like a garland around the hearthstones of humanity. A man may pride himself upon a son whose good traits bespeak a great and good career; but it is now a fairly accepted law of heredity, established by the researches of modern science, that in most cases of normal heredity the male offspring borrows its traits from the female parent and not from the father. Unfortunately, we know too little of the great mothers of the world. Like the violet, they blossom in secret places; and, as the whereabouts of the shrinking flower is often disclosed only by the fragrance it exhales upon the passing breeze, so do we often discover these modest women only by the perfume of those good works which have gone forth from a secluded home, to scatter sweetness and light along the ways of life and breathe a benediction to the world. One such there was in Nazareth.

Hovering along the sky-line of the world's events, like the fleecy, gold-tipped clouds that mingle their radiance with the splendors of de-

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parting day, now floating into view, now fading into night, are these great mother-spirits of the world; always distant, beautiful, retreating, vanishing. The mother-spirit! always, everywhere and forever hallowed by the touch of baby fingers, and crooning the lullaby that sweetens life, sanctifies the heart and makes for human-kind a home. Here sits woman upon her proper throne, ennobled and dignified beyond the power of political caprice or governmental whim; place her upon the hustings, and she becomes the buffoon's jibe and the scoffer's jest. All the political rights the world has yet conceived will not be worth what it will cost society to make that change.

The present sex disturbance which appears now to converge upon England is by no means without substantial British precedent. In 1642 Ann Stugg, the wife of a London brewer, led a delegation of English women to the door of the House of Commons demanding women's rights. Similar disturbances superinduced by the uxorious gallantry of hyperæsthetic men, have occurred elsewhere—notably in ancient Rome, where the Elder Cato once felt constrained to deliver a speech in the Roman Senate against the intermeddling of the Roman matrons in politics. But the causes of these disturbances are to be sought primarily

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not in the realm of economics, but in the field of sexual psycopathy, and the remedy is more likely to be found in Krafft-Ebing than in Karl Marx. Anthropologically considered, the women's suffrage propaganda may be regarded as an atavistic movement. Lester F. Ward, in his "Pure Sociology," argues that in the earliest dawn of human existence woman was the only sex, and that man was at first a mere parasite upon her, and I believe that most sociologists are now of opinion that the savage peoples all passed through what is called a "matriarchal stage," in which descent was traced through the woman exclusively and in which woman was the dominant sex. Conceding the correctness of this hypothesis there can be no doubt that the establishment of the female suffrage is a step toward reversion to a primitive type of society and is thus a social atavism. It were quite needless to add that the prompt repudiation or repression of all atavistic tendencies is a condition precedent to a healthy social growth. And, aside from all this, the sexual characteristices of the female forbid the assumption of the same duties and responsibilities as the male. The menstrual period alone supplies an incisive psychic as well as physical distinction between the sexes. Krafft-Ebing, Westphal, Tuke, Pelmann, Mabille,

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Philoindicus, Bartel, Ball, Kirm, Hugo Miller, Girand and other noted scientists have collected numerous cases showing the nerve storms and emotional instability which are common at this period, or which arise from its delay, suppression or excess, and which sometimes result in crime. Says Dr. Hall[4] on this subject: "Excitement, rising sometimes to mania, depressing states shading toward suicide, aches, tensions, flaccidities, pains local and general, imperative ideas, impulsive acts as violence to others, setting of fires, perversion of appetite, præcordial anxiety, sleeplessness, delusion of persecution, nervous coughs, irritability, etc., and crimes done in epileptoid and more or less unconscious states, fear and vague dreads, aptly characterized by Cowles as fear of fear, religious states of consciousness of abnormal intensity or kind, a series of such phenomena more or less pronounced and repeated with great uniformity every twenty-eight days for years, or as in other cases so protean that no two periods are alike, sometimes preceding, sometimes during, and sometimes after the flow itself, gravely complicates all classes of legal responsibility." They should also, it seems, tend to complicate political responsibility, and it

[4] Psychology, etc., pp. 338-9.

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is difficult to perceive the advantages which are to accrue from a wholesale recruiting of the electorate from persons liable to be so mentally and physically incapacitated every four weeks. The baneful effects of the feminine suffrage upon a civilized nation would not be noticeable in a year or, perhaps, in a generation; but its certain contravention of biologic law would in the course of generations bring a retribution none the less severe because so slowly manifest.

There are voters enough and to spare. What we need to do is to increase the quality of the suffrage; not its quantity. Good citizenship requires unceasing attention to public affairs; for liberty, like all things truly valuable, cannot be gained or kept without great effort, and it remains not long with the undeserving. Civil liberty is always in danger. It is so from its very constitution, being in its perfection but an equipoise of contending forces. Nations have seldom lost their liberties in the shock of battle. Babylon had fallen long before she saw the handwriting on the wall. So, too, in their turn, fell the conquering Persians, when blinded by the glitter of gold and corrupted and enfeebled by the vices of wealth. If Alexander had never been, the empire of the Great King would have perished

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just the same. Greece, also, had fallen long before Chaeronea. As the Prince of Orators said to his degenerate countrymen: "If Phillip were dead you would raise up another Phillip to fight against you." No barbarous Goth was necessary to complete the extinction of Roman liberty. And so it has ever been. The decay of a nation, like that of an oak, begins at its heart. When the symptoms become plainly visible it is usually too late to apply the remedy. But although most of the various schemes of social improvement are not universally and permanently effective because not fundamental, yet many of them are at least of temporary value. Such treatment of social disease may be likened to "emergency treatment" in the medical science.

There are many reforms which would tend to promote public justice, and to create a greater regard for the laws. Prof. Maurice Parmelee of the Department of Sociology in the University of Missouri, in chapter 8 and 9 of his "Principles of Anthropology and Sociology," exhaustively discusses the theory of public defense in criminal prosecutions, and gives brilliant support to the arguments of Ferri and Lombroso, both of whom have advocated a "public defender" for those accused of crime. Although the accused has long

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had the doubtful benefit of the "presumption of innocence" (theoretically, at least) society has really been a long time arriving at the idea that the accused is really possessed of rights which the State is bound to safeguard. Until 1836 the accused was not permitted, in England, to employ counsel in his own defense, and he had no such right at common law.

By what process of reasoning are we to reach the conclusion that society should be more interested in the conviction of the guilty than in the acquittal of the innocent? Society's first duty, it would appear, should be to protect the innocent. It is a cardinal principle of criminal jurisprudence that every person charged with crime is presumed innocent until his guilt is made to clearly appear from the evidence adduced at the trial, and that this presumption of innocence is a continuing one and attends the prisoner throughout the trial until broken down by convincing evidence of his guilt. If we believe that, why does the State employ salaried counsel to secure convictions, while the prisoner who happens to be without sufficient means to fee a lawyer is relegated to a defense upon the part of an attorney appointed by the court to serve without compensation? Good lawyers, it is true, are sometimes appointed by the

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court in these so-called pauper cases. But they always regard it as a hardship, and while there are on record, in such trials, some conspicuous examples of a lawyer's devotion to the ethics of his profession, every lawyer knows that the first thing usually suggested to the client in these cases is a plea of guilty, the inevitable alternative of which is a half-hearted defense. I believe that the points made in behalf of the public defender are well taken. Moreover, he should, as a representative of the State, appear in all criminal trials in behalf of the accused, if we are to accept the theory that the State is in all cases as vitally interested in establishing innocence as it is in proving guilt.

Another reform, equally necessary, and closely allied with the one just discussed, is the proposition to make reparation, out of the public treasury, to persons wrongfully prosecuted, or at least to those wrongfully convicted of crime. This reform has been advocated by Bentham and Garofalo, and in France by Necker, Pastoret, Voltaire, Merlin, Legraverand, Hèlie, Tissot, Marsangy, and many others; in Italy by Carrara, Pessina and Brussa; in Germany by Geyer and Schwartze; in the United States by Parmelee and others, and by lawyers and publicists generally in all parts of the

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civilized world. But, to this time, the principle seems to have found recognition only in the laws of Hungary, Mexico, Portugal, Sweden, Denmark, Switzerland and some of the German states.

Why any state or sovereignty should be allowed to unjustly and wrongfully bring about the conviction of an innocent person of a heinous crime, without making any reparation at all to the accused or his family, is beyond the power of rational conception. Here is at least one instance (and a conspicuously glaring and serious one) in which our boasted maxim of *ubi jus ibi remedium* does not apply. Why this strange incongruity has remained in the law is difficult to imagine. In a number of instances innocent men have been convicted of capital crimes, and some have been actually put to death. (See Wills on Circumstantial Evidence.) Is it possible to conceive of a more revolting and hideous wrong? If such injustice is to meet with the sanction of the law and with the approval of society, are we to blame a man for harboring anti-social instincts? I found a man in the Missouri penitentiary serving a five-year sentence for highway robbery. His case had been passed upon by the Supreme Court and the judgment affirmed. After he had served

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two years as a felon his innocence was established beyond the possibility of doubt. Damage? No man could suffer greater damage. Yet it was *damnum absque injuria.* Damage without injury! Because, forsooth, "the State can do no wrong!" When, by command of the chief executive of the State, I placed a pardon in the hand of that man, that document should have been accompanied by the check of the State Treasurer for a sum which might at least in some measure have shown the disposition of society to compensate the damage. In many such cases complete reparation is impossible, but at least a partial compensation should be offered.

Compensation to the dependent members of the convict's family has likewise become a topic of discussion among criminologists and publicists. It is a fundamental and constitutional principle of American law that "no conviction shall work corruption of blood or forfeiture of estate." But we violate that principle whenever we starve a man's wife and children in order to confine him in a prison where his earnings are confiscated by the State or sold to the slave-drivers of the contract labor system. American States and municipalities have, however, made some progress with this reform. We have what is known as the Detroit

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System. The city of Detroit has been working under an ordinance adopted June 14, 1910, which is as follows:

"SECTION 1.—It shall be the duty of the board of inspectors of the Detroit House of Correction, and they are hereby authorized, to pay directly to the board of poor commissioners of Detroit, from surplus funds under their control, the sum of five thousand dollars on July 1, 1910, and on July 1st each subsequent year.

"SEC. 2.—It shall be the duty of the poor commissioners of the city of Detroit, after due investigation and as its discretion may direct, to distribute said money to those dependents of residents of Detroit, the head of whose household is detained in the Detroit House of Correction, under such rules and regulations as may from time to time be adopted by the board of poor commissioners.

"SEC. 3.—This ordinance shall apply only to cases where the prisoner has been committed for a longer period than thirty days from a court within the city of Detroit, and where it is shown that the prisoner has left unprovided for a wife and one or more children under the age of 15 years, or other dependent who resides within the limits of said city."

The practical operation of this ordinance will appear from a brief extract from a paper read

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PLATE X.—BURGLARY TYPES.

(Courtesy Kansas City Police Department)

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before the meeting of the American Prison Congress, at Omaha, in 1911, by Mr. Wm. H. Venn, parole officer of Detroit, viz.:

"This ordinance has been in operation over one year. It provides that the sum of $5,000 be placed to the credit of the Poor Commission, yearly, through which commission distribution is to be made to the families of these prisoners. The year which ended June 30, 1911, saw $3,355.50 thus expended, which was applied to the relief of 360 wives and children of persons confined in the house of correction."

The State of Minnesota has enacted the following law:

"SECTION 1.—That the state board of control be, and it is hereby authorized and empowered to provide for the payment to prisoners confined in the state prison or in the state reformatory of such pecuniary earnings and for the rendering of such assistance as it may deem proper, under such rules and regulations as it may prescribe. Such earnings shall be paid out of the fund provided for the carrying on of the work in which the prisoner is engaged when employed on state account, and by the contractor when the prisoner is employed under contract; and such assistance, when allowed, shall be paid out of the current expense fund of the institution.

"SEC. 2.—Any money arising under section 1

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of this act shall be and remain under the control of the state board of control, to be used for the benefit of the prisoner, his family or dependent relatives, under such regulations as to time, manner and amount of disbursement as the board may prescribe. But, should such prisoner wilfully escape from the state reformatory or the state prison, or become a fugitive from justice, or commit any breach of discipline at either institution, the said board of control may, in its discretion, cause the forfeiture of all earnings remaining to the prisoner's credit, and the same shall be replaced in the fund from which it was originally taken."

Mr. Frank L. Randall, of St. Cloud, Minnesota, had this to say at the Omaha Prison Conference of 1911, regarding the operation of this law:

"Under the authority contained in this act, the state board of control prescribes the payment of wages in different grades on a certain scale. For instance, the maximum is 12 cents a day, or 15 cents a day, under certain conditions, provided that the conduct is reported 1, the labor 1, school work 1. That is the highest mark. If any one of these three features is lacking to any extent he would get a little less. It is also provided, in cases of exceptional merit, which would include valuable service, the state board of control, on the recommendation of the executive head of

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the institution, may add 50 per cent to the maximum.

"Under this arrangement the prisoners are required to save enough money to fit themselves with clothing, transportation and other things that they will need upon leaving the reformatory or prison, and some pocket money besides, in addition to which we retain at least ten dollars in our hands, so as to aid them in case of emergency. Out of this money they may send, from time to time, such moneys as it seems proper for them to send to their dependents or to their friends, whether dependent or not, or to their relatives in any part of the world.

"In the last ten months we have aided 13 families by direct appropriations regardless of merit. We have made something like 55 payments to them, the total amount being under $1,000. . . . With our present population of something like 400, taking into account the fact that many of them are non-residents, perhaps some two or three thousand dollars would be sufficient to piece out and answer the purpose which this act aims at.

"I suppose it is safe to say that, in a good many instances during the last year, the wife with a child or two, or maybe in some cases three or four children, has been aided sufficiently so that she has not suffered harsh deprivation and has kept her brood together, where otherwise she would not have done it, and we find the effect on the man is most encouraging if the man has any-

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thing like an ordinary fair appreciation of his duties as a husband and father, or as a son to a widowed mother, or to a helpless father or mother."

Relief is provided for families of convicts in the District of Columbia by an act of congress approved March 23, 1906, in the sum of fifty cents per day to the family for each day's labor by the convict. The law is confined in its operation to cases of abandonment, wilful neglect and nonsupport. Judge William H. DeLacey of the Juvenile Court summarizes the effect of this law as follows: "The enforcement of the nonsupport law has done much to correct juvenile crime. The family is the true unit in the state; the child is but the fraction. To reduce evils in the home is oftentimes to rout out the efficient cause of the child's delinquency." Judge DeLacey's view suggests the remark of Father Thomas J. Moran, who said, at the Second National Conference of Catholic Charities, held at Washington, D. C., in 1912: "There are really no delinquent boys, but there are delinquent parents. Delinquency is on the part of the parents, and if I could only get at the parents that would be a long way toward solving the problem."

The Detroit plan has been adopted by the state

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of Maine. Missouri enacted a law in 1907 setting aside five per cent of the earnings of penitentiary convicts for the benefit of their families, when employed under contract, or an amount equivalent thereto if employed by the State. But the Missouri law, for some reason, has up to this time never been put into operation.

In all these laws, the relief is made to depend upon the good conduct of the prisoner, and in no case has society unequivocally recognized the right of the families of convicts to any part of the earnings of the prisoners while confined. The wife and children of every man have a right to support out of his income. This is recognized by the laws of all civilized countries. How, then, and by what natural right do we deprive the wife and children of this property right without just compensation? The children of convicts are already under a heavy handicap. They must combat the possibility of inherited criminal tendencies and the certain influence of criminal environments, besides the contempt of society and the shame of criminal parentage. Is it right to add to this the additional burden of enforced poverty? It is true that under the "poor laws" of most states and countries these dependents may receive small stipends from the pauper fund. Is it

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best to thus pauperize them? Would it not be better for society to recognize the right of the wife and children to the earnings of the husband and father? To do otherwise is to confiscate that which belongs to them, and, while punishing the convict, to inflict the heaviest penalty upon the innocent and helpless victims whom he leaves outside the prison walls. Public aid of the kind here suggested, when properly administered, ought to improve the home conditions in the families of convicts. The conviction is yearly growing stronger among students of crime and its causes, that in order to check the growth of criminality we must begin with the children. Don Bosco demonstrated that in Naples, and Bernardo demonstrated it in London. The brethren of St. Francis de Sales are demonstrating it throughout the world, and the Juvenile Courts are daily confirming this theory in every American state. Rev. James Donahue, of St. Paul, Minnesota, after an exhaustive study of conditions in his city in 1912, declared that juvenile delinquency is due to the following domestic conditions: Death of father or mother, invalid condition or prolonged and impoverishing illness of father or mother, mental deficiency of father or mother, insanity, desertion, divorce, imprisonment of the head of the house,

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constant quarreling, loss of religious faith on part of parents and consequent lack of religious training of children, intemperance, laziness, insufficient income, love of pleasure, especially craze for theatre-going, bad housekeeping, general immorality, and the occasional keeping of a roomer whose influence over the home is bad. Some of these factors in the genesis of crime will not be accepted as vital or controlling, but that bad home environment and lack of moral and industrial training are chief among the destroyers of children none will deny. This fact is now generally recognized. During the year 1911 there were 15,163 children arraigned before the Children's Court of New York City. Of the total number it was finally found necessary to commit only 3,297, and Patrick A. Whitney, Commissioner of Corrections, states that nearly all these were "sent to about forty institutions of denominational character, where religious instruction is given, in addition to educational and industrial training."

Commissioner Whitney's idea is to first find the causes of delinquency so that effective treatment may be administered. Is the child corrigible or incorrigible? If he is corrigible it is the duty of the parents or guardian to endeavor by proper

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methods to correct his faults. If, on the other hand, he be found incorrigible, physical restraint in some institution is the one means of preventing him from becoming an actual criminal. Dean Arthur Holmes of the Pennsylvania State College, states that when delinquents appear for clinical examination, inquiry is made of the parents or guardian of the child for the purpose of securing a narrative of his life history, including especially a detailed account of his conduct and of any causes that may have brought about his moral deficiency. From the personal history of the child he passes back to the family history, making note of any hereditary influences that may appear. After the oral examination comes the usual physical examination for the purpose of disclosing the presence of removable defects or permanent stigmata. Then the mental examination follows, revealing the presence of any defect in mentality. To these reports a sociological examination may be added, because neighborhood, home life and moral training have much to do with moral incorrigibility. Inquiry must also be carefully made into the nature of his acts to ascertain their relation, first, to the impulses or instincts giving rise to them, and, secondly, to the purpose or end that was intended to be accom-

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plished. Dean Holmes cites numerous cases where investigation showed that delinquency was the result of disease in early life, scarlet fever and diphtheria having left their marks on the mentality of the sufferers from these diseases. The intellectual faculties were so injured as to prevent the performance of rational acts of conduct. He also states that falls, injuries, blows upon the head or other physical shocks should be investigated, but should not be given too much weight unless the series of bad actions begin immediately after such injuries. When bad heredity and bad environment coalesce in one individual; when to these are added physical defects, the physical and moral diseases of a pauperized home, neglect of training, and a neighborhood destitute of any uplifting circumstances, moral delinquency is sure to follow. Commissioner Whitney states also that the plans of investigation outlined by Dean Holmes are now being followed by Dr. Geo. M. Parker at the City Prison of New York, commonly called the "Tombs."

It is the opinion of this New York investigator that Juvenile reform is best accomplished in the country, where the child will have opportunity to work in the open fields and be brought closer to nature, and where he may be housed in a cottage

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free from prison atmosphere. This, also, is Dr. Bernardo's plan. The city of New York in 1912 appropriated $550,000 for the establishment of such an institution in the country. A number of institutions in New York are now operating along these lines, among them the Agricultural School connected with the Catholic Protectory, the Juvenile Asylum, the Hebrew Home at Hawthorne, New York, and the State Agricultural Society at Rochester. The "industrial farm," as a place of detention for juvenile delinquents, is becoming an adjunct to many cities.

The benign and helpful functions of the Juvenile Court are being yearly given a wider activity. The system, at first confined to a few metropolitan cities, has within a decade spread through the United States. Every year sees new amendments to State laws, extending the scope of its activities and broadening the field of its usefulness. In Missouri, the legislature of 1913 vested some of the powers of juvenile courts in the probate judges of the various counties. The tendency to take the child offender away from the atmosphere of the criminal courts is one of the most hopeful indications of our times. The system is too newly established to permit of a final statistical demonstration of its merits, but because of the unques-

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tioned correctness of its tendencies and the beneficial results thus far experienced we may look forward with confidence to a substantial decrease of youthful criminality. The usefulness of the juvenile court may be vastly increased by the assistance rendered to probation officers by societies, individuals and philanthropic institutions. Thus, in the city of Pittsburgh, the Knights of Columbus, a fraternal order, employs out of its own funds probation officers to assist the regular officials of the juvenile courts.

Societies for the aid of discharged convicts have in some instances, no doubt, greatly retarded the tendency to recidivation. Few objects bearing the semblance of man are more pitiable and helpless than the human being who walks out of the penitentiary without means and without influential friends, and carrying with him only the memory of his criminal association in prison—and the indelible brand of the ex-convict. In a few of the United States, notably in Massachusetts, these societies have accomplished much good, but their existence is not general in the United States. The proper function of the "Aid Society for Discharged Prisoners" is to provide remunerative employment and wholesome environment. Such societies exist in England, Prussia, Switzerland,

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Denmark, Sweden, Belgium, Holland, Italy, Russia, and Austria. Through these social activities many have been prevented from returning to crime.

The growth and maintenance of philanthropic institutions of various kinds are accompanied by a substantial decrease in crime. This is shown by the examples of London and Geneva. Lombroso found London to be the least criminal of the great capitals of the world, and Geneva is one of the few European cities in which crime has during some years shown a steady decrease. There are 120 institutions in London, such as 60 orphanages, 21 employment societies, 40 night and vacation schools, 84 for the aid of ex-convicts, 36 of which are for female offenders, and 68 mutual aid societies. It is said that more than 200,000 persons each year are assisted by these London philanthropic societies. The English National Society for the Prevention of Cruelty to Children has rescued more than 100,000 children in ten years.

But, in this respect, the social activities of Geneva are more extensive than those of London. In Geneva there are more than 400 such institutions, including those which provide public baths, home protection, recreation, industrial

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training, music, asylums for fallen women, unemployed women, people's kitchens, free lectures, etc., etc.

The majority of the larger American cities provide for free concerts in the public parks in the summer season, but no facilities are afforded for free musical training outside the public school—and public school music in the smaller cities and towns is remarkably crude. Dr. Hall declares that the influence of music is especially potent during the period of adolescence and that "for the average youth there is probably no such agent for educating the heart to love of God, home, nation and country, and of cadencing the whole emotional nature, and hence there is no aspect of our educational life more sad than the neglect or perversion of musical training from this its supreme end." Music can, indeed, "soothe the savage breast." This is no figment of the poet's fancy. Its salutary influence upon the insane is well known, and I have often witnessed its good effects in penitentiaries. The principle of public education, so widely diffused in the United States, should be extended to include free concerts and free public lectures at stated intervals. The wonderfully rapid growth of the Chautauqua and the Lyceum method of public instruction and enter-

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tainment in the majority of the American states indicates a genuine and widespread craving for this species of intellectual diversion. In the more advanced states of North America almost every hamlet has its "lecture course," suitably interspersed with music, and here the people congregate in large numbers to hear the public discourses by leaders in various avenues of thought and to enjoy a higher order of musical talent than the home community affords. These institutions are cheerfully sustained by the voluntary patronage of the people, and children are always among the most interested listeners. It is a distinct pleasure to visit an American community while the "Chautauqua Assembly" is in session. Although the yearly assembly lasts but one or two weeks, during that period the community is alive with a genuine glow of mental and moral enthusiasm, and dissipation of all kinds is at its minimum. The opportunities thus afforded for mental and moral growth, as well as the inducements for higher thinking and cleaner living, are too obvious to escape the attention of the criminologist. Here, undoubtedly, is an avenue through which the inhibitory forces of civilization may expand with rapidity and ease, and where the degrading influences that lead to crime are most unlikely to per-

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suade. As a part of this system the properly selected motion-picture and other forms of theatrical entertainment should by no means be overlooked. Some of the European publicists have urged the State subsidy for theatres with free performances, upon the theory that human beings require a psychic stimulus and that the theatre would thus take the place of more dangerous forms of stimulation.

A system of police which would elicit the respect and win the confidence of a community, instead of its hatred and contempt, would go far toward inducing respect for and obedience to law. While many cities are properly policed, and even where the worst possible conditions exist there are good men in the police departments, the system, as a whole, is too often brutalizing and disgraceful. In many cities the police officer is but an armed bully. George Creel, Chairman of the Board of Police Commissioners of the City of Denver, shocked all the American police departments by disarming the police force of Denver; but the order at least served to call general attention to the fact that a police officer ought to be something more and something else than the mere embodiment of brute force. The indiscriminate method of making arrests is also reprehensible.

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Of 81,648 arrests made in Chicago in 1911, 49,934 were found to be innocent. Of 9,840 women locked up that year in Chicago, 1,920 were held as witnesses merely. The policy of placing innocent persons under arrest and then putting them in confinement, even for a few hours, should be discouraged. The name and address of a witness is all that an officer should require in order to provide for the service of a subpœna.

An investigation made recently by the Juvenile Protective Association of Chicago, and described in the *Journal of the American Institute of Criminal Law and Criminology*, for May, 1913, discloses frightful brutality in the treatment of juvenile-adult offenders by the police of Chicago. It was learned that the police sometimes arrest boys without taking the trouble to notify the parents; and more than once the poor mother has learned of her boy's arrest after a night of anxious waiting, only by seeing the account of the arrest in the newspaper. More than this,—says A. P. Drucker, who aided in this investigation—the boys complained of terrible beatings received at the hands of the police. Some were kicked, sandbagged, bullied; and one had a tooth knocked out. One had cold water poured over him, and

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was threatened with hot water if he would not turn state's evidence against some one whom the police were desirous of "sending up the road."

Another grave form of abuse described by Mr. Drucker is that known as the "mugging system." It is the custom of the Chicago police department to photograph all prisoners held to the grand-jury by the municipal judge, before they are sent to the county jail, and these photographs are preserved in the "rogues' gallery." But only those unable to furnish bail are sent to the jail before their trial. It follows that only impecunious prisoners are photographed. Yet most of the juvenile-adults photographed during the year 1912 by the Chicago Identification Bureau were innocent boys, inasmuch as 55 per cent of the cases brought to the Bureau to be photographed and described were later discharged as "not guilty." Such abuses are not by any means confined to Chicago. So general has become the recognition of this wrong that the matter is being brought to the attention of State legislatures, and the Missouri Legislature of 1913 passed a bill prohibiting this practice in certain cases. It would, indeed, be hard to conceive of a more certain method of driving a young man to anti-social

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acts than this of arresting him upon suspicion, locking him up without cause, and placing his portrait in a gallery of criminals.

The right of the police to make arrests "on suspicion," if allowed to exist at all, should be exercised with extreme caution, and the practice of arresting ex-convicts periodically, as is done in some cities, is utterly without justification. Speaking of these unfortunates, the Chief of Detectives of a great city once said to me: "We have to round them up once in a while to make sure that they are keeping straight." I was protesting because of his having caused the arrest, without reason or excuse, of one of my paroled prisoners. Such instances suggest the thought that the percentage of relapse among discharged prisoners is not always due to a degeneracy of the prisoner. Sometimes it may be due to the heartless cruelty of police officers.

To destroy the anti-social instinct in man where it is found to exist, it is necessary to increase the inhibiting power of his social instincts. Teach him to practice social service, and let the precept be enforced by the example. The social center should be wanting in nothing which makes for better citizenship. The worst districts of the large cities may be improved measurably, and the

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moral status of the community completely transformed, by providing the means both of education and harmless recreation, such as gymnasia, swimming pools, dance-halls (conducted, of course, under careful supervision), municipal playgrounds, and the organization of various societies for mutual protection, recreation and enlightenment.

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PART III.
THERAPEUTICS.

CHAPTER VIII.

The Theory of Punishment.

Students of the history of punishment have noticed (1) the extreme cruelty of punishment among savages, (2) that cruelty and ignorance exist in about the same proportion and (3) that enlightenment, and particularly the better understanding of the nature of crime and its causes, has tended to modify the barbaric forms and to mitigate the severity of savage punishments. Gibbon truly says (ch. 14): "Whenever the offence inspires less horror than the punishment the rigour of penal law is obliged to give way to the common feelings of mankind."

The controlling idea of the savage was vengeance. Upon this basis was formulated the savage theory of punishment. Punishments origin-

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ally were administered by the victim or his family, and not by the sovereign or chief. The Abyssinians delivered the murderer to the nearest relations of the victim, to be disposed of as they deemed proper. The ancient German was always allowed the right to kill his adversary. The same was true of the savages of Australia. By the code of the Visigoths it was provided that for any offence for which there was not already prescribed punishment the *poena talionis* should prevail. Men were punished "in kind," according to the savage Hebrew maxim of "an eye for an eye and a tooth for a tooth." Thus one who set fire to a house was himself destroyed by fire. This was also the idea of the primitive Greeks. Theseus, according to Plutarch, put a period to the cruelties of Procrustes by making his body fit the size of his own beds, as Procrustes had treated strangers; this in imitation of Hercules, who always destroyed public enemies by precisely the same methods they had employed in killing their victims. The idea of compensatory retaliation, however, was worked out in various schedules. In some of the savage tribes of Africa a murder may be satisfied by any price agreed upon between the murderer and the friends of the victim. In some instances it has required several lives to bal-

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ance one death. In the barbarous parts of China, as among the ancient Scythians, all the relatives of the culprit, to the ninth degree, are subjected to the same punishment as the offender himself. The husband suffers for the guilt of the wife, the father for the children, and if the father be dead the eldest son must answer in his stead for the younger children. In the Illiad, Achilles is represented as having killed twelve Trojans in retaliation for the death of Patroclus.

With the growth of society life and property became more valuable and the compensatory plan of punishment came into more extensive use. A fixed compensation was established for nearly all criminal acts, varying with the dignity and importance of the victim and the offender. Capital punishment for murder was contrary to the spirit of the Franks, who, like mose barbarous nations, would have thought the loss of one citizen poorly compensated by the loss of another. Accordingly, the weregild was paid to the relatives of the slain according to a legal rate, which was fixed by the Salic law at 600 solidi for an Antrustion of the king; 300 for a Roman conviva regis; 200 for a common Frank; 100 for a Roman possessor of lands; 45 for a tributary, or cultivator of another's property. Murder was punishable

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by death in Burgundy, but other personal injuries were compensated, as among the Franks, by a fine graduated according to the rank and nation of the aggrieved party.[1]

With the growth of society the kings and chiefs, as the embodiments and representatives of the social power, began to claim these fines, and although the idea of vengeance was never abandoned, the theory that crime was an offence against society took hold upon the public mind, and in the course of time the officers of the social organization took upon themselves the authority to inflict the vengeance that was formerly held to be the right of the individual.

Primitive man, apparently, knew no such thing as crime, in the moral sense. It was common among the Malays to test their weapons upon the first person who approached. The young man of Borneo was not permitted to choose a wife until he had killed at least one person. Among the ancient Germans, as among the early Egyptians and some of the Greek tribes, theft was not regarded as wrong, and was sometimes considered a virtue. With the dawning sense of property the savage relinquished his right to steal before abandoning his right to kill. Murder is a secon-

[1] Leges Salicæ, c. 43; Leges Burgundionum tit. 2.

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dary offence in the code of Manou, but a goldsmith who practices fraud is to be cut to pieces with a razor. So, too, among the Mongolians, theft was worse than murder. When with the growth of feudalism in Europe the chief became really the proprietor of the tribe, all thefts were necessarily against him, and from that period date the vindictive provisions of the European codes against theft. When practically all property belonged to the chief or king, to take it or threaten it without his consent became the greatest of all crimes. Finally all crimes came to be considered as committed against the ruler, and all men, therefore, who committed such crimes were equally inexcusable and wicked. Any violation of the sovereign's will was an act so horrible that only the severest penalties were thought proper to vindicate the majesty of the king. Torture was the inevitable result. The limbs of the criminal were torn with red hot pincers, and melted lead was poured into the wounds, after which his body was torn in pieces by four horses, and the remains burnt and scattered to the winds. The "boot" was a famous implement of torture. It was a boot of iron put on the leg, and wedges were driven in, commonly against the calf but sometimes on the shin-bone. Officers of the English

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government used it to punish disloyal or suspected Scotchmen in Edinburg.[2] The excrutiating horrors of mediæval punishments which defied the refining influences of civilization until a century ago can scarcely be conceived by a normal mind. Men were cut with knives and the gashes filled with boiling pitch. Some were doubled backwards on a wheel and slowly crushed to death. Others were pierced with red hot irons, their eyelids cut off, and the victims thus nailed face upward to a platform in the broiling sun. Into the ears of some victims boiling oil was poured. Others had their tongues cut out. Some were skinned alive and then covered with hot pitch or salt. Others, horribly mutilated, were cast into noisome dungeons, there to be bitten and stung to death by poisonous reptiles, and their bodies left to rot. Burning at the stake, inconceivably atrocious as it seems to us, was among the mildest of these inhuman punishments. Of the 341,021 victims of the Spanish Inquisition, 31,912 were burned alive. And the Inquisition was abolished as late as 1808.

About one hundred years ago John Howard, the English prison reformer, made a tour of inspection among the European prisons. He found the torture chamber then in use in all the prisons

[2] Knight's Eng., vol. 4, p. 294.

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on the continent. This chamber was usually underground, so that the cries of the sufferer might not be heard. Clad only in a long gown the trembling victim was led to this apartment, where were assembled the magistrates, the executioners, a surgeon and a secretary; and there he was tortured till his agony had wrung from him a confession, real or fictitious. "Sometimes it was the thumb-screw, sometimes the boot, sometimes a chair with spikes in the seat, sometimes it was a machine for dislocating the arms, sometimes it was the lash or shower-bath, that tried the endurance of the accused." But always it was the infernal spirit of malicious deviltry and malignant savagery, nurtured by absolute power in the hands of ignorance and ill-will, which made of men incarnate fiends, and degraded and debased human nature to a lower level than that of beasts of prey.

Among all animals man is most cruel—indefensibly cruel. Civilization from the beginning has been a constant warfare against this cruel and savage instinct, and where the inhibiting powers of civilization are most highly developed cruelty is least in evidence. And nowhere are the influences of civilization more noticeable and more potent than in the development of humane theories and forms of punishment. The struggle,

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however, has been hard, and progress has been slow.

The State's right to punish has been boldly questioned by many profound and brilliant minds. Lombroso did not believe that any theory of punishment had a sound basis, excepting that of natural necessity and the right of self-defense. This he correctly identified as the old theory of Beccaria, Romagnosi and Carmignani, and defended by Garofalo, Ferri and Poletti in Italy, by Hommel, Feuerbach, Grollmann, and Holtzendorff in Germany, by Hobbes and Bentham in England, and by Ortolan and Tissot in France.

The causes which operate to produce crime are usually extrinsic and independent of the individual will. As Rondeau said: "Anger is a passing fever, jealousy a momentary delirium, the rapacity of the thief and swindler an aberration of disease, and the depraved passions that drive men to sins against nature are organic imperfections. All moral evil is the result of physical evil. The murderer himself is a sick man like all other criminals. Why, and in the name of what principle, could they be punished, unless it is because they disturb the regular course of the social life and impede the normal and legitimate development of the species? On this ground society, or,

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better, the government, had the right to place an obstacle in the way of the fatal consequences of their acts, just as a land owner has a right to build a dike against the flood which threatens to inundate his fields. The social power can, then, without scruple and without hesitancy deprive malefactors of their liberty; but the moment that all crime is recognized as the natural product and logical consequence of some disease, punishment must become only medical treatment. We shall cure the thief and the vagrant by teaching them the joys of honest work. If by an exception, which is unhappily too frequent, they show themselves insensible to medical cure, they must be separated from their fellow-citizens."

The state, like the individual, must possess the inalienable right to self-defence. Man as a single individual cannot part with that right without violating the law of life—the right to live. This right being primordial in its nature, and indispensable to existence, the man in his social capacity cannot logically be deprived of it. Man in a state of society does not and cannot under any circumstances yield up any of the rights which are necessary to life itself. Acts which strike at the social life may be therefore repelled upon the theory of self-defence. Crime is an anti-social act.

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Society, therefore, has the right to repress it. As Carmignani says: "The reason for the State's calling a criminal to account is not to exact vengeance for the crime, but to bring it about that crime shall not be committed in the future." But, as Beccaria says, "Penalties which go beyond the necessity of preserving the public weal are unjust." This is necessarily true, for society cannot acquire any rights in derogation of the rights and privileges of the individual excepting alone those rights which are necessary to its own protection. In other words, man in a social state and considered as a social being, yields up no rights, foregoes no liberties, excepting those the forefeiture of which may be required for the good of his fellows. Otherwise stated, the correct principle is simply this: Society exists for the general good and its component elements must subordinate to the general welfare all activities which in a state of nature they might otherwise exert. It will thus be seen that society is not only vested with a right, but also with a duty to repress and repel all acts which threaten its own security and which if permitted to prevail generally would result in a general reversion to a state of nature. Moreover, since society's right to punish invasions of the social body flows from the right to protect itself,

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we must assume that the social organism is of itself a just and necessary institution and one which is indispensable to the happiness and prosperity of the individual. If not, there would be neither reason nor justice in compelling the individual to subordinate his own will to that of society. And if society in this sense exists to promote the individual happiness and prosperity, then, in recognizing the social right of self-defence, we likewise recognize another basis of justification of the right to punish, i. e., the right of social altruism, or the right to do unto the individual that which, in the light of the social conscience, shall appear necessary to the welfare and happiness of the individual, wholly apart from any considerations of purely social expediency. This is in accord with the ethical concept of brotherly kindness and with the Christian precept of the Golden Rule. It should be a source of satisfaction to know and to feel that the right to punish is not based wholly upon the idea of social egotism involved in the principle of self-defence. In the higher and broader view, every man is indeed his "brother's keeper," and the State owes to the individual the duty of repression or reproof for the good of the offender—indeed, we may safely say primarily for the good of the offender.

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This principle, however, is not to be given too broad an application. It is not to be understood as implying that society can sit as a court of conscience and pass final judgment upon the morality of individual acts; for organized society has itself been frequently immoral, and the State cannot be the final judge of rectitude. But, within certain limitations, and in the event of known deviations, the correctional power of society may be invoked for the individual good and we may therefore soundly conclude that the State's right to punish rests upon the twofold premise of a duty to the State and a duty to the individual as well.

Punishment is not to be considered merely as a weapon of social defence; it should also be among the instrumentalities of social improvement. By punishment, however, we do not necessarily mean the infliction of physical pain. The considerations of common humanity demand that the infliction of physical pain be avoided whenever and wherever possible, and where apparently unavoidable, pain should be minimized to the minutest degree possible. It is a dangerous concession to admit that the infliction of physical suffering is ever permissible as a phase of legal punishment, for it was just such logic that gave to us the Inquisition and the torture chambers of modern Europe.

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This brings us to a consideration of the value of punishment. Whatever value it may or may not possess, it is certain that punishment is not a specific for crime. Force is not the remedy for force. If that were true, crime would be less where punishments are most persistent and severe, and we know that this is not the case. "Penal law in society," says Ferri, "has the same qualities as education in the family and pedagogy in schools. All the three were once dominated by the idea of taming the passions by force; the rod was supreme. In course of time it was perceived that this produced unexpected results, such as violence and hypocrisy, and then men thought fit to modify their punishments. But in our own days schoolmasters see the advantage of relying solely upon the free play of tendencies and bio-psychological laws. Similarly the defensive function of society, as Romagnosi said, in place of being a physical and repressive system, ought to be a moral and preventive system, based on the natural laws of biology, psychology and sociology." Tarde and Lombroso, among others, have taken quite vigorous exception to these views of Ferri, but none the less my own observations tend to support the opinion of Ferri. Force has made many hyprocrites but it never made a citizen. Force as

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a preventive operates only upon the victim, and the moment it is relaxed it becomes inoperative. Where criminals are reformed, if at all, the reformation is a mental and moral and not a physical process, excepting where dereliction was the result of physical causes yielding to therapeutic treatment.

Punishment, to serve as a deterrent by force of example, must be certain if it is to be effective. You may convince a man that he will suffer a penalty he sees inflicted upon another, provided you convince him that he will be detected. How can you convince one man that he will be caught when he sees so many others escaping? Every new crime is a proof that punishment does not deter. If conviction always followed upon the heels of crime, the situation would be vastly different. Even the certainty of detection and exposure would deter most men from crime. It would deter in all cases of deliberate crime, excepting in the case of some defectives and degenerates, and for these the only remedy is permanent isolation. The severity of punishments counts for absolutely nothing as a crime deterrent. This is amply shown in the case of capital punishment.

As practiced in the United States today capital punishment is illogical and inconsistent, both

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in the manner of its administration and in the reasoning by which it is ostensibly supported. These infirmities are especially apparent in the following among other important particulars:

We are accustomed to justify the death penalty as a deterrent example, but we take pains to render the example as inconspicuous as possible by dispatching the victim with the utmost privacy. Puplic executions are generally abolished, and are now conducted in the obscurity of a jail yard with but a very limited number of spectators present. In our day few indeed are the persons who are permitted to behold the gallows, even in its repose. It is safe to say that the majority of men do not know what it looks like, excepting from hearsay. Not one in ten thousand has seen one.

If the gallows is to serve as a warning against the commission of crime, it should be placed as conspicuously as possible. Men and women should be allowed to inspect it, and to point it out to their children as a thing of terror. It should be a visible manifestation of the majesty of the law, a standing monition of the wage of sin. When culprits are put to death thereon, men, women and children—especially the children—should be present, in order that they may imbibe

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the full measure of terror which the example should inspire in the hearts of the people; to the end that, having witnessed the example, they may be impelled by its inspiring force to walk in the ways of righteousness and peace. Yea, more; the victim himself, after his taking off, should be made to subserve the same benign purposes, as was formerly the case, when the criminal's dissevered head was set upon the gates of the prison and his limbs distributed among the principal cities of the kingdom. In such manner was the treason of the Duke of Monmouth punished; but, unfortunately, the example even then was not sufficiently potent to prevent the overthrow of King James but a few years later in the Revolution of 1688. In the executions of that elder day it was also an incident of inspiring solemnity to stick the head of the victim on the end of a pike-staff, as a gruesome reminder of the portentous truth that the way of the transgressor is hard.

By such means the example may be seen and felt, and made so plain that "he who runneth may read." If capital punishment be of any value as a public example the public should be made fully cognizant of that example. A head that is set on a pike-staff, like a city that is set on a hill, cannot be hid. It is futile to undertake to set an ex-

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ample that none can see. An inconspicuous warning is an ineffective warning.

Why then was publicity done away with? Why does the hangman shun the light? For this reason only, and none other: Men concluded that such scenes tended to engender sentiments more barbarous than those which they were designed to suppress; i. e., that public executions were brutalizing. Private executions are said to be *less* brutalizing; the spiritual welfare of Jack Ketch, to be sure, being placed out of the reckoning. It is finally agreed, then, that these public killings are in themselves debasing and immoral, and instead of setting a good example they set a bad one. And the private execution. Does it set any example at all? If so, what kind of an example? And, in so far as it affects the public mind at all, is not the effect in kind, if not in degree, precisely that which attends the public execution? It can operate as a warning only to the extent that it is known and its terrors realized. The logic that condemns public executions because of their bestializing influence cannot justify the private execution as an influence for good, because it involves a concession that in so far as that influence extends it is harmful in character. Therefore the private execution, in so far as it exerts an influ-

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ence, exerts a bad one; otherwise, by the very logic of its advocates, it should not exist.

Whenever recourse is had to do the death penalty, that penalty is applied because it is thought that life imprisonment is not sufficiently severe. Is the death penalty sufficiently severe? How are we to determine this point? If the element of severity be accounted the salient principle of criminal punishments, how can we regard any punishment as sufficiently severe which falls short of preventing crime, and why shall we not increase the penalties to the very limit of severity until crime shall cease or be reduced to its minimum? When we fail to do that, we give evidence of insincerity; we show that we do not believe that which we both preach and practice in our administration of the death penalty. Nothing is more clear than that the gallows and the electric chair do not prevent murder.

Homicidal crime appears to be increasing in the United States. If severity is to be the principal deterrent, then nothing can be plainer than that we are not sufficiently severe in our punishment of murderers. The example we make of them is not sufficiently horrible to impress upon the public mind the extremely hazardous nature of homicide as a trade or pastime. Indeed, we

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often hear it said of this or that criminal, that "hanging is too good for him."

If death in any manner is impressive because of the severity of the punishment, why is not torture still more impressive? In the time of Henry VIII., those who committed murder by poisoning were boiled to death, like lobsters. Now it is plain that no sane person wants to be boiled alive. Therefore, is it not reasonable to believe that men would refrain from murder if they knew that boiling would be the penalty? Or, they could be fricasseed—or sent to the packing houses, for soap grease. Ravaillac, the man who murdered Henry IV., had his flesh torn off with hot pincers. Vivisection, too, might be practiced upon them, in the interest of science. As early as the 4th century B. C., Herophilus of Alexandria dissected living criminals who were supplied by the state for that philanthropic purpose. Is it reasonable to suppose that any Southern negro would commit rape if he thought he would be turned over, alive, to the "student-doctors" and the dissecting table?

One thing is certain, and that is this: If severe punishments prevent crime, then we are woefully lacking in severity. Hanging is too mild a punishment. The advocates of the scaffold and the

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electric chair are mere maudlin sentimentalists. If they are right in their theory of criminal punishments, they err in not going far enough; if wrong, they have erred in going too far. In either event, the argument for severity, carried to its logical conclusion, is an argument for the abolition of the death penalty as now administered.

Under its own definition of murder society makes itself as guilty of that crime every time a legal execution occurs as is any culprit who dies upon the scaffold. After a crime has been committed, no private individual has the right, either morally or legally, to deliberately kill the criminal, it matters not how wicked or depraved that criminal may be. Any person who did so would be adjudged guilty of murder. But that which the individual would scorn to do directly, he does indirectly, and that which no private member of society is allowed to do individually is done by society in the aggregate.

The common law definition of murder, as given by Mr. Wharton, one of the greatest authorities on criminal law, is as follows:

"Murder is where a person of sound memory and discretion unlawfully kills any reasonable creature in being, and in the peace of the com-

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monwealth, with malice prepense or aforethought, either express or implied." As is well known, malice may be implied from the deliberate use of a deadly weapon, and an instrument certain to produce death is a deadly weapon; ex. gr., the gallows or the electric chair. The gist of the crime in all cases is the deliberate intent to kill.

To make one a principal in a murder it is not necessary that he should inflict the mortal wound. One need not spring the death trap in order to share the responsibility for a legal execution. In every case society stands by, aiding and abetting the killing. Nor is it necessary, according to the accepted authorities, that the homicide, in order to constitute murder, should be the effect of the "direct" violence of the person charged with murder. If he set in motion the dangerous agency which results in the death of his victim, it may be murder. If a person intentionally do any act towards another, who is helpless, which must, necessarily, lead to the death of that other, it may be murder. It matters not how depraved the victim may be, to deliberately kill him or cause or aid another to do so, is murder. Society says so, and the law decrees it. Even to kill an alien enemy in time of war is murder, unless the killing occur in the exercise of actual warfare.

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The general rule under the common law and the statutes of the majority of the American states is that justifiable or excusable homicide can exist only when the proper officer executes a criminal in strict conformity with his sentence, where an officer in the legal exercise of a particular duty kills a person who resists or prevents him from exercising it, or where the homicide is committed in preventing a forcible and atrocious crime; as, for instance, in self-defense, or where the deceased was in the act of committing robbery or murder.

The law, as will be seen, exempts the hangman; for to be a murder the killing must be done "unlawfully," and whatever else may be said of the hangman it cannot be said of him that he hangs persons in violation of the laws as they exist and are declared and construed by the courts. The hangman is merely an agent—your agent and mine. He acts deliberately and with intent to kill. He coolly plans the death of his victim and deliberately carries his plans into execution. But his act is authorized by law. For this reason, and for this reason only, it is not murder. If any other human being, not clothed with his official authority, killed the same person in the same manner, it would be murder.

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Society has in the aggregate authorized a particular officer to do a particular act which any other member of society would be hanged for doing. The hangman, however, does not make the law. He can only obey, or else resign and permit its mandates to be carried out by another. But society does make the law.

To the hangman, killing is but obedience to the law. But what law does society obey when it decrees the death penalty and sets in motion the dangerous and deadly agency that destroys a human life? There is no law by which the people of any state are required to authorize capital punishment. They are not forced to do so. They do not act under duress, or any species of compulsion. It is upon their part a voluntary act, deliberately performed, decreeing death to those whom they never saw. Through the hangman, therefore, society commits a murder every time the death penalty is executed. As to society, in such cases (though not as to the hangman) every element of murder exists as defined in the indictment against the victim. Strike the word "unlawful" from the common law definition of murder, and you make the hangman as much a murderer as the man he hangs. That word defends and acquits the hangman. But to what law does

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society turn for its defense? Confronted with these wilful and deliberate homicides done through its decree, how can it escape the charge of murder by the very definition it gives of that crime?

In vain do we search the category of justifiable and excusable homicides for a vindication of the State. You do not execute the condemned man while he is resisting an officer, or while he is attempting to commit some forcible or atrocious crime; you do not execute a criminal in a heat of passion, by accident, or in self-defense.

What, then, has society to say? Simply this: "It is necessary." The major portion of society thinks it necessary that such a one should die. Therein lies the right to kill; therein lies all the defence that can be interposed to the indictment against society for the crime of murder every time it commits a cold-blooded, intentional, deliberate homicide. The victim may think otherwise. A very considerable minority of the members of society unquestionably do think otherwise. We come, then, to this proposition: The right of any man to live depends solely upon the popular vote. Society having decreed by a majority vote that certain persons shall die, they are executed. Is that a defence to the charge of murder? It may

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be argued for society that the man who commits a capital crime knows in advance what the penalty will be, and that having notice of the consequences he acts upon his own responsibility and at his own peril, when he incurs the death penalty. This suggests the story of the Texas cow-boy who stole a horse. He was lynched, and the coroner's jury brought in a verdict of *suicide*. But the service of notice of an intention to kill cannot mitigate the crime; it simply emphasizes the murderous intent, and aggravates the element of premeditation, which is the chief constitutive element of the crime of murder.

Having by popular vote determined that in certain cases human beings should be put to death, society has taken unto itself to say when a man shall live and when he shall die; it is the sole judge of the expediency and of the necessity. If it have this right, human existence, then, must depend upon the will of society. If it have the right to say whether or not a man shall die it has, by the same process of reasoning, the same right to say whether he shall be born, and the right which builds the gallows implies the right to commit abortion—or infanticide, as did the Ephora under the constitution of Lycurgas.

It is a distortion of terms and a trifling with

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words to call this power a right. It is neither more nor less than the exercise of inborn and inherent power, regardless of abstract considerations of right or wrong; and it is the same power which the individual murderer exerts when he slays his victim.

However benevolent the general purpose of legal executions, as to the helpless victim himself their purpose is annihilation, predetermined and premeditated, and the motive is one of murderous malignity. Whether society should continue to commit these deliberate murders may be an open question; but that society does commit murder in the instances mentioned does not admit of doubt.

From the foregoing considerations it appears that our death penalty is an anomaly in logic and in law; that it is conceived in ignorance, maintained by falsehood and consummated in murder; that it is inconsistent with itself, with right reason and sound morality, and repudiated by the very logic that seeks to sustain it; that in its administration we do privately that which we would not do openly, we do in part that which we would not do entirely, we do collectively that which we would not do individually and we convict ourselves of the very crime we condemn in others.

The author sometime ago addressed a letter of

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inquiry to the attorney-generals of the various states of the Union upon the subject of capital punishment. Only 16 of the 40 officials whose states practiced capital punishment expressed themselves of the opinion that the death penalty does tend to prevent crime. Eighteen of the 40 declined to express an opinion. Two of the 40 were of opinion that the death penalty should be abolished, and were positive in the opinion that capital punishment has no tendency to diminish capital crime. Four of the 40 responded in an indefinite manner.

The attorney-generals of the five states of Kansas, Maine, Michigan, Rhode Island, and Wisconsin, which have abolished the death penalty, noted no increase of capital crime since the abolition of capital punishment, and declared themselves satisfied with the conditions existing in their respective states.

Capital punishment was abolished more than fifty years ago in the states of Rhode Island, Michigan and Wisconsin, and has never been reenacted at any time since. Although the death penalty is nominally authorized by statute in the State of Kansas, that punishment can be executed only after the signing of a death-warrant by the governor. No Kansas governor has yet been

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found who would sign a warrant for the execution of any criminal and the condemned persons have meanwhile remained in prison. In six of the states where the death penalty exists, the trial jury have the power to commute the sentence to life imprisonment. The Missouri law giving the juries an option in such matters was enacted in 1907. In the six years since that date capital punishment has decreased about 75 per cent, the juries usually preferring to administer life imprisonment instead of the death penalty, but during these six years there has been no increase of capital crime in Missouri.

The State of Iowa abolished the death penalty several years ago, but subsequently re-enacted it, as the attorney-general wrote me, "because of the increase of murders in the State." It does not, of course, follow that these sequent murders were a direct result of the abolition of the death penalty, or that, if such abolition had anything to do with the increase of capital crime, it was the sole or controlling influence in bringing about that result. To justify that conclusion it would first be necessary to exclude all other factors which tend to induce homicide, and none would be rash enough to say that at least a few of those factors did not exist in Iowa at the time of such increase

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in capital crime. In this respect the experience of the State of Maine has been exactly the reverse of Iowa's experience with the death penalty.

The State of Maine abolished the death penalty in 1876. In 1883 this penalty was re-enacted for the crime of murder alone. Two years later (in 1885) the governor of Maine in a message to the State legislature then in session, referring to the re-establishment of the death penalty for the crime of murder, stated that there had been "an unusual number of cold-blooded murders within the State during the two years last past," and that the change in the law relating to the punishment of murder had not afforded the protection anticipated. In 1887, two years later, and just four years from the date of its re-enactment, the death penalty was again totally abolished in the State of Maine, and has not since been re-enacted. Advices from that State are to the effect that the people of Maine are so vehemently opposed to the death penalty, and there is so little capital crime committed in that State, that there is no likelihood of capital punishment ever being re-instated in that commonwealth.

In the thirteen years prior to the abolition of the death penalty in Michigan there were 37 murders, as against 31 murders in the thirteen years

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following. The population having increased 50 per cent, there was, therefore, an actual decrease of 40 per cent in the number of murders. The statistics of Rhode Island and Wisconsin likewise show a decrease of murder in proportion to population. Holland and Portugal also showed a decrease of murder after the abolition of the death penalty. The American States in which capital punishment does not exist are not suffering from the general increase of homicide, and the trend of American legislation generally is away from rather than toward capital punishment. So, too, has been the general tendency throughout the world.

In France there were formerly 116 capital offences. As late as 1666 there were more persons executed in a single province than are now convicted in the whole of France. Before the year 1780 England punished 240 kinds of crime with death, among them many offences which, like "witchcraft," are no longer known as crimes.

At Cambridge, Mass., August 31st, 1826, Judge Joseph Story said, in an address on "Characteristics of the Age":

"Harsh and vindictive punishments have been discontinued or abolished. The sanguinary codes, over which humanity has wept and philosophy

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shuddered have felt the potent energy of reform, and substituted for agonizing terror the gentle spirit of mercy. America has taken the lead in this glorious march of philanthropy. There are not in the code of the Union, and probably not in that of any single state, more than ten crimes to which the judgment of legislation now affixes the punishment of death. England, indeed, counts in her bloody catalogue more than 160 capital offences. But the dawn of a brighter day is opening upon her."

There now remain, of all that "bloody catalogue," but four capital crimes, England having removed the death penalty from 146 offences since the great American jurist spoke. The same humane spirit has been at work in the American States. At the time of Judge Story's address the death penalty was the law of every American State. It is now abolished in five. Instead of there being "not more than ten" offences punishable by death in any State, there are no longer that many capital offences in a single one of the United States today. Of the States practicing capital punishment, nineteen have but one capital crime; nine states have two; three states have three; five states have four; two states have six; one state has seven; and but a single state has as many as eight capital crimes. The State of Mas-

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sachusetts illustrates the tendency. As a colony, Massachusetts prescribed the death penalty for 12 different offences. Now she prescribes it for murder alone. Virginia leads in the number of capital offences (8); Louisiana is second, with 7; Missouri and Delaware are third, with 6 each. All the States employing the death penalty prescribe it for the crime of murder. In 16 of them, rape is punishable by death. Treason is a capital crime in but 10 states.

The American citizens know that there is quite as little treason and just as much patriotism and loyalty in the States whose statutes do not punish treason by death as will be found in the 10 States whose laws prescribe capital punishment for this crime. Missouri, Delaware and Virginia visit the death penalty upon the crime of kidnapping. But the homes of the people in other States are quite as secure from this species of invasion. During the past ten years Colorado has suffered more from homicidal violence than has the adjoining State of Kansas. Colorado imposes the death penalty for murder (excepting in cases where the evidence is wholly circumstantial), but in Kansas the murderer goes to prison for life—or to await the signing of his death warrant by the Governor, a contingency which never happens. The death

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ductive and industrially the most efficient r
world has ever seen. Industrial education
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not too much to ask for this great purpose,
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Every nation that has ever lived and die
died because it didn't know how to make a
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although she could shape the obelisks, bui
pyramids and read her glory in Elkarnack
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Pharaohs her degenerate sons are still

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penalty did not check the murderous feuds in the State of Kentucky nor did it, a few years since, prevent the assassination of a Governor.

Illinois, with a larger negro population than Missouri, suffers no more from the crime of rape than does her sister State; yet Missouri decrees death to the rapist, while Illinois does not. The attorney-general of a leading Southern State, in response to one of my inquiries, replied: "In my opinion it (the death penalty) *does* tend to diminish capital offences, *except the rape of white women by negroes.*" If there is any crime which the Southern States have punished with the utmost rigor, it is this crime of rape. But even death, torture and the stake have not removed it from the category of the principal crimes with which the South is afflicted. Although the white people of the Southern States are doubtless in no mood to listen to a proposal to abolish the death penalty for rape, yet the history of that section of the Union has undoubtedly shown that the efficacy of criminal punishment lies not alone in its severity, nor always in its certainty, and that practically the only merit of the death penalty is that which Bentham says naturally suggests itself to a primitive state of society, viz.: it extirpates the offender.

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Singularly enough, so accurate a thinker as Gabriel Tarde, who otherwise writes with great intelligence, appears to attempt a justification of the death penalty, as well as of war, upon the basis of the theory of Malthus and that of Darwin. Neither, however, can be said to offer convincing support to capital punishment. This is easily apparent. In his "Essay on Population," Dr. Malthus attempts to show that population increases more rapidly than the means of subsistence—a proposition by no means demonstrable, because although we may, from our knowledge of the nature of man, be able to forecast to some extent the growth of population, we can by no means and by no manner of possibility estimate the future productivity of the world. New means and methods of production are being discovered every day, so that in some instances an acre of ground is made to yield a hundred times more in food values than it would have yielded at the time when Malthus wrote his essay. The trouble with the Malthusian school of materialists is that they totally ignore the factor of intelligence and the inventive powers of man. But, even if Malthus were correct, that would not cause his doctrine to lend support to capital punishment. On the contrary, it would lend much greater support to mur-

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der. Once we reach the conclusion that the human race is multiplying too rapidly and that society is benefited by those things which tend to limit population, we are forced to admit that the professional murderer is to some extent a public benefactor. The death penalty, in that event, would be a very bad thing because it would discourage murder—if it does discourage murder (and M. Tarde thinks that it does).

As to the Darwinian theory of natural selection and the survival of the fittest, that is always a better doctrine for plants and lower animals than it is for men. Besides, homicide committed by the State in administration of the death penalty is not *natural* selection; it is artificial selection. The law of natural selection would permit the strong to devour or destroy the weak. But, when one attempts that, you hang him for it, and we have "resolution thus fobbed as it is with the rusty curb of old father antic, the law." Fie upon such natural selection. Is that Darwin's theory? By no means. And as to the survival of the *fittest*—who are they? The eugenists are opposing war because the fittest are usually slain. In Mexico, where assassinations and executions both legal and illegal, wars and murders, are playing a retaliatory game, we should like to know if

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the fittest will survive. They will break a Mexican precedent if they do.

All history seems to bear out Beccaria's principle that, in the matter of crime prevention, the certainty of punishment is of far more avail than its severity. If mere severity could avail anything, England would be more lawless today than she was three hundred years ago. But it is known that at no time was thieving so general, and at no time were the rights of property less secure, than during the time when every petit larceny was punishable by death, and thieves were hanged twenty at a time. During the reign of Henry VIII., 70,000 thieves were hanged in England. Commercial paper is more secure in England today than it was when every petty forgery was punishable by death, notwithstanding the fact that when Parliament was considering the bill for the abolition of the death penalty for forgery the bankers of London protested against the bill upon the ground that its enactment would destroy the value of commercial paper in Great Britain. Konrad Celtes[3] wrote: "Women who have been brought into disrepute because of witchcraft or superstitious practices, or have been guilty of infanticide or abortion, have various punishments

[3] De Origine, Situ, Moribus, et Institutionibus Germaniæ.

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inflicted upon them; being either sewed up in sacks and drowned, or even burned to death, or buried alive. Yet these cruel punishments are not sufficient to prevent their continually adding crime to crime." Historians are advised that there was not as much crime in Rome under the Valerian and Porcian laws, when capital punishment was abolished, as there was in later times, when every tyrant's frown meant a subject's death.

Prof. Ferri says that in the statistics of capital punishment at Ferrara, during nine centuries, he discovered the significant fact that there was a succession of notaries executed for forgery, frequently at very short intervals, in the same town. "This," says he, "attests the truth of the observation made by Montesquieu and Beccaria, as against the deterrent power of the death penalty, for men grow accustomed to the sight; and this again is confirmed by the fact mentioned by M. Roberts, a jail chaplain, and M. Birenger, a magistrate, that several condemned men had previously been present at executions, and by another fact mentioned by Despine and Angelucci, that in the same town, and often in the same place, in which executions had been carried out, murders are often committed on the same day." A similar occurrence was detailed by the late Justice Fox

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PLATE XI.—GROUP OF CONFIDENCE MEN.

(Courtesy Kansas City Police Department.)

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of the Supreme Court of Missouri. While he was "on circuit" a large concourse assembled to witness an execution, in one of the counties of his circuit, in the days of the "public hangings." Various affrays occurred in the crowd, and two men were stabbed, one of them fatally. Indeed, one of the reasons for making all executions private in the United States, was the fact that the public execution was usually the occasion for the assembling of a disorderly crowd, in which bloodshed was by no means a rare occurrence.

It may be appropriate to here recall an utterance of Robespierre, which, in the light of history, seems to have been prophetic. On the 30th of May, 1791, in an oration of great power and beauty, he asked the Constituent Assembly to abolish capital punishment. In the course of his remarks he discussed legal executions in the following words: "They cause to germinate in the bosom of society ferocious prejudices which in their turn again produce others. Man is no longer for man an object so sacred as before. One has a lower idea of his dignity when public authority makes light of his life. The idea of the murder fills us with less horror when the law itself sets the example and provides the spectacle; the horror of the crime diminishes from the time the law

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no longer punishes it except by another crime." In two years the Reign of Terror burst with all its fury and vindicated every word of Robespierre.

Plato[4] says: "Every one who undergoes punishment, if that punishment is rightly inflicted, ought (1) either to be made better thereby and profit by it, or (2) serve as an example to the rest of mankind, that others, seeing the suffering he endures, may be brought by fear to amendment of life." This is the generally accepted doctrine at the present time. In the case of capital punishment, Plato's first object of punishment is lost in death, irretrievably and immediately. And the second object, the example, is of but transient duration or momentary effect. The dead are soon forgotten, whereas the example of a living convict might serve for a generation.

Society can have but two rational objects in the infliction of the death penalty. One is to protect itself from the individual malefactor. This object can be conserved as well, and to greater profit, by life imprisonment. The sole remaining object is to deter others by the example; which, however, it has by no means done, and this is proven not only by the prevalence of capital crime where capital punishment prevails, but by the fact that where

[4] Gorgias, Sec. 525.

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capital punishment does not prevail, the various forms of capital crime are no more frequent. Considerations such as these, doubtless, have led to the total abolition of the death penalty in five of the United States, in seventeen of the twenty-two cantons of Switzerland, in Holland, Roumania, Belgium, Portugal, Italy, the Argentine Republic, Brazil and Venezuela. It never existed in the States of the Church, no Pope ever having permitted capital punishment within his own territories.

The right of the State to take the life of a citizen has long been a subject of discussion; although conceding the soundness of the doctrine of the "consent of the governed" as the ultimate basis of all just governmental authority, it must be admitted that one cannot be morally held to a contract whereby he consents that another may take his life. Precisely this absurdity, however, was advanced by M. Foullee, who believed that by the imaginary or mythical "social contract" the condemned must be held to have agreed beforehand to the punishment of death. In our civil jurisprudence no man can give another the right to do him bodily injury. Such contracts are always void as against public policy. But the case against capital punishment is made when it is

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shown simply to be unnecessary. It is slowly dawning upon the public intelligence that human beings do not refrain from the commission of capital crimes merely through fear of being hanged. Every person who commits a capital crime knows that, in States adhering to capital punishment, the death penalty is affixed to that particular crime. From a personal study of 3,500 cases, including a number of condemned murderers, I am convinced that most crimes are committed by persons who either (1) expect to avoid detection and escape all punishment, or (2) who, upon the spur of the moment, are regardless of all punishment, or (3) who are governed by one or more cosmic, social and individual factors, which the utmost rigor cannot remove, and which render the prospect or possibility of punishment wholly inoperative at the time of the commission of the crime.

If unnecessary to kill the offender for the protection of society from the individual malefactor or to deter others from the commission of similar crime, the justification can be sought in the *lex talionis* alone; or, in other words, it must be justified solely and purely as a matter of retaliation and vindictive punishment in accordance with the savage principle which we have hereto-

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fore mentioned. Indeed, though excused by publicists upon other grounds, the proletariat always justifies capital punishment for murder exclusively upon the theory of retaliation, thinking it entirely rational and just that the blood of the culprit be shed by way of atonement and satisfaction for the blood of his victim. But the laws of modern civilization, with this single exception, nowhere contemplate retaliation or tolerate the idea of revenge. Such considerations are entirely foreign to every modern juristical concept. Although the idea of retaliation was common among certain of the ancients—notably the Hebrew—and among the barbaric peoples of Europe during the Middle Ages, it is no longer recognized in the civil establishments of the modern era. If one burn the dwelling of another, we do not destroy the offender's dwelling in return, although under some of the ancient statutes, all incendiaries were burned alive. If he publish a criminal libel, the law does not decree the publication of a libel against him. If he commit a felonious assault, the law does not authorize a similar assault against him on the part of the victim or the victim's family, as was the case under the ancient laws of England. All these crude conceptions of justice have gone their way, with the thumb-screw

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and the rack, with trial by compurgation, combat and ordeal, and we are learning, with Montaigne, that it is just as barbarous to kill a live man as it is to roast and eat a dead one.

And the cruel and vengeful laws of capital punishment—"those laws"—in the language of Victor Hugo—"those laws that dip the finger in human blood to write the commandment 'Thou shalt not kill,' those impious laws that make one lose one's faith in humanity when they strike the culpable, and cause one to doubt God when they smite the innocent"—those laws, too, are being slowly blotted from civilization's book of the law, and are passing away before the enduring eloquence of men like Beccaria, Montesquieu, Turgot, Franklin, Guizot, Hugo and John Bright, and the inexorable logic of an experience that is teaching the world the iniquity of revenge and the folly of shedding human blood.

As Franz Joseph Gall said in 1810: "The measure of culpability and the measure of punishment cannot be determined by a study of the illegal act, but only by a study of the individual committing it." Whatever may be thought of Gall's phrenology, he was unquestionably sound in his criminology. In the foregoing excerpt he has stated the rule which underlies the true philosophy

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of punishments. Punishments are for men and not for crimes. The laws should be shaped accordingly. "The nature of law is to be learned from the nature of man," says Cicero—*a natura hominis discenda est natura juris.* This should be the legislative criterion in formulating a penal code. "It is impossible," says Ferri, "to separate the crime from the criminal, as it is impossible, in drawing up a penal code, to suppose an average criminal type, which, in reality, one never meets in any case. Now what does the judge do? Before him is a pair of scales. In one of the pans he puts the crime, in the other the penalty. He hesitates, then diminishes one side and adds to the other, expecting thus to measure the social adaptability of the criminal. But, having once pronounced the sentence, the judge does not concern himself to know whether the person condemned falls again into the same crime. What does he know of the application of the penalty and of the effect that it has upon the criminal? Further, when a criminal is sentenced for 20 years, but reformed in 10, why keep him there for 10 years longer, when another, to whom it would be useful to remain in prison longer, is liberated at the end of 5 years? Crime is like sickness. . . . What should we say of a physician, who, stopping

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at the door of a hospital ward, should say to the patron brought to him, 'Pneumonia? Syrup of rhubarb for 15 days. Typhus? Syrup of rhubarb for a month; and then, at the end of the time named, turn them out of doors, whether cured or not?"

How much more logical is this Italian publicist than the great German philosopher Kant, who, in "The Metaphysical Principles of the Law," sets up the requirement that the penalty should not only be *equal,* but should be *similar* to the offense; a requirement obviously impossible of fulfilment, even if it were not absurd. But why should the punishment be equal in kind as well as similar in nature? If Kant's position is sound at all, his logic should carry him a little farther, so that the State might return blow for blow, with interest; which is the more logical, too, since the object of punishment, according to this view, being not only retaliatory but also to vindicate the "majesty" of the State, a mere return of blow for blow would by no means meet the requirements of the situation. Accordingly, one who maliciously trod upon another's corns should be given the bastinado and thus be repaid in kind, with interest. From all which we are to observe that men are never more childish than when

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PLATE XII.—TYPICAL MURDERERS.

(Courtesy Kansas City Police Department.)

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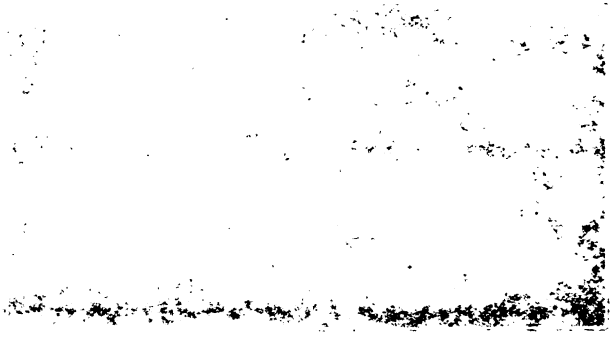

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they attempt to measure human conduct by the severe process of a scholastic formula. As well may we attempt to measure it with line and rule and compass. Human nature is not to be so adjusted or adjudged.

Each human being is so thoroughly unique, both physically and psychically, that no two criminal acts can possibly be governed or controlled by precisely the same motives or antecedents. Therefore no two crimes can be exactly the same, either in moral turpitude or social effect. In the mind and body of every criminal, in his social life and moral and industrial opportunities, in his domestic life, individual heritage, in his physiological or psychological condition, there are elements which, quite apart from the legal evidence which is supposed to establish the crime, render his act different from the act of any other man. The circumstances in which the crime was committed, and all the causes which induced it, must each be considered and given due weight in establishing moral turpitude. When so considered, we shall find that no two murders, no two forgeries, no two robberies, no two crimes of any kind are exactly alike. The legal evidence may be the same in each case, but neither the cause nor the effect, in any two crimes, will be precisely the same. They

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are as widely varied and as completely different as the minds and motives of men. This is not saying that a criminal is to be judged only by his motives, or that who means well can do no ill. But we do mean to assert that in determining the nature of crime we are not to close our eyes against the obvious fact that the nature of crime varies with the nature of the individual committing it, and that, therefore, it inevitably follows that punishments should be adjusted upon the basis of moral culpability and responsiveness to reformatory treatment rather than upon the admeasurement of stated, uniform terms of imprisonment for all malefactors committing the same offense. "Is it not clear," asks Herbert Spencer, "that neither by absolute morality nor by Nature's precedents are we warranted in visiting on him any pains besides those involved in remedying, as far as may be, the evil committed, and preventing other such evils? To us it seems that if society exceeds this, it trespasses against the criminal."

Moreover, it must be readily observed that there is no possibility, in very many cases, of determining wholly the proper kind and degree of punishment at the time of the trial. This is true, because (1) the nature of the prisoner and the causes of his delictuosity are not susceptible of immedi-

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ate determination, and (2) because the effect of the punishment, like the effect of medical treatment, can be noted in many cases only from time to time and by means of a more or less prolonged series of observations. It is manifestly impossible for any judge to say, at the time he imposes sentence upon a prisoner, just what the effect of that sentence will be upon the prisoner or upon society. Those results can be determined only in the future, and, usually, they may be better determined in another forum. Necessarily such results will not be the same upon any two prisoners in the same period of time, nor can the effect upon society in general be the same in each case. When the punishment has been sufficient for both the good of the offender and the welfare of society, it should instantly cease. But it should continue until that conclusion is reached by competent authority. The requirements of individual reform, as well as the requirements of social protection, must necessarily vary with each criminal and each crime, and also with the same criminal at different periods of his life.

The more this subject is studied in all its aspects, the more seriously are we inclined to doubt the collective and determinate theory of punishment, and the more certainly and irresistibly are

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we drawn to the conclusion that the only rational hope of criminal therapeutics lies in the individualization of punishment, wherein and whereby the crude and exploded theories of retaliation, intimidation and expiation give way to the more advanced ideas of reformation and education. The whole subject of the individualization of punishment has been admirably treated in an interesting volume by Raymond Saleilles, Professor of Comparative Law in the University of Paris.

Lombroso's position that the factors of crime are almost wholly anthropological, and Ferri's position that they are almost entirely sociological are both valid in certain particular instances, and to a degree in all cases, but are wholly unsound as a general and infallible criterion for establishing criminal responsibility and adjusting criminal punishment in all cases. The individualization of punishment presupposes, among other things, a variation in responsibility due to the changing and ever-varying conditions and types of men. Without an understanding and recognition of these differences and variations there can be no justice in penal judgments, and neither the good of the individual nor the welfare of society can be properly conserved. However, the difficulties which beset the way of rational and effective penal

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reform are numerous. A practical and complete system of punishments, erected upon the theory of individualization and applied universally to the problem of crime in America, would require the amendment of probably all the American constitutions and would vest in the criminal judge a wide latitude of discretion resembling that of a court of equity. But, nevertheless, substantial progress in this direction has already been made, as will be demonstrated in the succeeding chapter of this volume.

Prof. Roscoe Pound, of Harvard, in his introduction to the English version of Saleilles' work, finds in the influence of Puritanism a reason for the hostile attitude of American institutions toward this reform. "Here he was in the majority," says Professor Pound, speaking of the Puritan, "and made institutions to his own liking. It is no accident, therefore, that common-law principles have attained their most complete logical development in America. Hence the contribution of individualist religious dogma to the criminal law was much greater in America than in France. The individualization in practice which was permitted by the canon-law conception of searching and disciplining the conscience was wholly alien to the Puritan. For

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above all things, he was jealous of the magistrate. If moral questions were to be dealt with as concrete cases to be individualized in their solution, subordination of those whose cases were decided to those who had the power of weighing the circumstances of the concrete case and individualizing the principle to meet that case might result. His idea of 'consociation but not subordination' demanded that a fixed, absolute, universal rule, which the individual had contracted to abide, be resorted to."

"Nowhere," says Morley, "has Puritanism done us more harm than in thus leading us to take all breadth and color and diversity and fine discrimination out of our judgments of men, reducing them to thin, narrow, and superficial pronouncements upon the letter of their morality or the precise conformity of their opinions to accepted standards of truth."

But, as Professor Pound observes, this is exactly the method of the classical theory in criminal law. "Indeed," says he, "our common-law jurists have taken it to be fundamental in legal theory. Thus, Amos says: 'The same penalty for a broken law is exacted from persons of an indefinite number of shades of moral guilt, from persons of high education and culture, well ac-

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quainted with the provisions of the law they despise, and from the humblest and most illiterate persons in the country.' And, be it noted, he states this as a matter of course, with no hint that we may attain anything better. Thus political events and the Puritanism of nineteenth-century America tightened the hold upon us of a theory which on other grounds for a time was accepted everywhere. For to find a proper mean between a system of hard and fast rules and one of completely individualized justice is one of the inherent difficulties of all administration of justice according to law. And in the movement to and fro from the over-arbitrary to the over-mechanical, the eighteenth and nineteenth centuries stood for the latter."

But the asperities of the common law are being softened in America as well as in England. As to juvenile offenders, it has been completely revolutionized, and almost within the past ten years. Moreover, in the United States, the rigidity of statutory law has resulted in a more liberal exercise of the pardoning power. The pardoning power, indeed, has exerted a potent influence upon the reform of the penal code, and its effects have all been in the direction of retardation. Harsh judgments and extreme punishments are viewed

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with greater complacency when it is known that relief may and probably will be afforded through the pardoning power. The more inflexible the code, the greater the need of a liberal exercise of the pardoning power; and, on the other hand, the more flexible the code, the more infrequent is the necessity for executive clemency. If there were no such power in existence it is highly probable that the penal code would ere now have been brought nearly to an approximation of the wider powers of equity jurisprudence.

The fallibility of courts and juries, as well as the known infirmities and limitations of legislative wisdom, make necessary the existence of the power to pardon and commute. "No human wisdom," says Francis Lieber,[5] "can contrive to make laws which will precisely cover all complex cases that may occur, whatever attention may be paid by law-makers to the variety of compound cases which they are able to imagine." The pardoning power is therefore analagous to the powers of chancery, in the sense that "equity is the correction of that wherein the law by reason of its universality is deficient." But the equity jurisdiction involved in the power to pardon is limited only by the laws of universal morality.

[5] Legal and Political Hermaneutics, p. 194.

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PLATE XIII.—SEXUAL PERVERTS.

(*Courtesy Kansas City Police Department.*)

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Aristotle[6] says: "The equitable is just, but not the justice which is according to law, but the correction of the legally just. And this is the nature of the equitable, that it is a correction of law, wherever it is defective owing to its universality." Elsewhere he says:[7] "And equity is that idea of justice which contravenes the law. . . . Equity also is the having an eye, not to the law, but to the lawgiver, and not to the conduct, but to the principles of the agent; not to his conduct in one particular, but to its whole tenor, not to what kind of a person he has been in this instance, but what he has always shown himself, or generally at least." And so Seneca[8] said: "Mercy is free in coming to a conclusion; she gives her decision, not under any statute, but according to equity and goodness." Puffendorf observes that "it is necessary that reason and the law of nature should supply the defects of the civil law." Domat[9] said of the laws derived from natural equity: "These are the laws which have in them a justice that cannot be changed, which is the same at all times and in all places; and whether they are set down in writing or not, no human

[6] Nicomachean Ethics, b. V. c. x. S. 4.
[7] Rhetoric, b. I. c. III., ss. 2-18.
[8] De Clementia, 1. II. c. 7.
[9] Les Lois Civiles, etc.

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authority can abolish them, or make any alterations in them." And so Bouvier[10] remarks: "There is a kind of equity founded in natural justice, in honesty and right, and which arises *ex aequo et bono;* this is called natural equity. . . . This kind of equity embraces so wide a range that human tribunals have never attempted to enforce it." It is the administration of these lofty principles which we vest in the chief executive of a commonwealth under the name and form of executive clemency.

Mr. W. W. Smithers, of the Philadelphia bar, in an able and exhaustive review of the pardoning power, in 1910, showed that it is now conceded under American institutions that an application for clemency is of legal right, whether based upon a claim of innocence or excessive punishment, and that a moral duty is imposed upon the executive to afford relief if a rational interpretation of all the data marks the case as entitled to remedy by that higher justice which planes above all positive law, all civil procedure and all evil equity. "It is not a question of guilt or innocence alone," says Mr. Smithers; "clemency is not trammeled by terms which belong to the judicial branch of the government. Every

[10] Institutes, sec. 3724.

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circumstance pertaining to the event and the individual is relevant *in foro clementiae,* which is beyond all rules of legal procedure, legal maxims and formalities, and in which doctrines like *Ignorantia legis non excusat* have no place. By this advanced view of the power the old, illogical position of an innocent person who accepted a pardon is eliminated. Victims of judicial errors no longer have to accept liberty under false colors. A pardon no longer necessarily implies guilt, for it may flow from clearly established innocence. Sir Henry Maine, so long ago as 1862, while a member of the Indian Governor's Council, referring to pardons in a minute on 'Suspensions and Remissions of Sentences,' said: 'Originally, as might be inferred from the old theory, the exercise of the power was a matter of grace and favor; more recently it came to be controlled by considerations of state policy or popular sentiment; and now, at length, it is rapidly becoming identified with a rehearing of the whole case.' "

A wise system of government will not remove the pardoning power, but it ought to make the exercise of that power unnecessary. Many things can be done to bring about this ideal condition. In the first place, a court of criminal jurisdiction

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should never completely lose jurisdiction of a case. In dealing with human life and liberty, a judge should never be wholly without power to rectify an error. In very many cases new facts are discovered long after the judgment has been entered and sentence pronounced. New conditions arise which could not be foreseen at the time of the trial. It should not be impossible for a judge, upon his own motion, at any time after judgment, to institute a subsequent inquiry for the purpose of settling any doubts which may arise in his mind as to the justice of a conviction or the severity of a sentence. To vest such power in a judge would not be to necessarily destroy the power of executive clemency, but its effect would be to relieve the executive of very many applications for clemency and to fix upon judicial officers a new sense of responsibility in criminal cases by making the responsibility a continuing one.

The manner in which, in some states, responsibility for criminal punishments has been bandied about, batted from court to Governor and from Governor to court, is by no means to the credit of our system of government. I have known a number of cases in which the prisoner was induced to enter a plea of guilty and accept a long

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term of imprisonment upon a promise, made by the judge, from the bench, that within a certain number of years the judge would intercede with the chief executive for a pardon for the convict. I have known another judge who persistently refused to offer a suggestion to the Governor in any case, saying: "It is as much beyond my province as a judge to make suggestions to the Governor either for or against an application for executive clemency, as it would be for the Governor to come into my court and offer to assist me in the decision of a case. In either event, the American theory of government, in which the executive, judicial and legislative branches are intended to remain wholly distinct, is violated."

Trial judges will sometimes ask a chief executive to grant clemency where they would not do so themselves if they had the power, and there have been and are many Governors who take the position that no pardon or commutation of sentence should be granted in any case excepting upon the recommendation of the trial judge and the prosecuting attorney. The uses and abuses of the pardoning power afford an interesting study in connection with the problem of crime prevention in the United States. With regard to this, however, as in respect of other phases of

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the crime problem, it is not always safe to attempt conclusive inferences merely from statistics and percentages. If there were but a single pardon issued in a year that one might constitute an abuse of the pardoning power, and if clemency were rightly exercised in each case it is possible that the pardon records could be swelled beyond their present dimensions without constituting an actual abuse of the function of executive clemency.

The American States have dealt in various ways with the pardoning power, the tendency being, wherever legislation is attempted, to limit the power and responsibility of the Governor, and in some instances seeking entirely to relieve him of that function. Thus, in Rhode Island, the Governor recommends all pardons to the State Senate; they are then referred to a Senate committee, which reports them back favorably or unfavorably. Consequently it is nearly as difficult to secure a pardon in that State as it is to procure the passage or repeal of a statute. Another peculiar provision is that of Iowa, where the Governor must ask the advice of the State Legislature before extending clemency in cases of murder in the first degree.

The pardon system, it may well be admitted,

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is not ideal. But it is made necessary by the want of ideality in the code. It may have been founded, as some say, upon the supposition that the right to punish originally existed only in the king. However that may be, it is not sustained upon that theory to-day. Filangeri[11] says: "Every pardon granted to a criminal is a derogation of law; for if the pardon is just, the law is bad, and if the law is just the pardon is an attack upon the law. By the first hypothesis, laws should be abolished, and by the second, pardons." All which, in my opinion, is most illogical and untrue. Human penalties are not like the pagan decrees of Fate, never to be modified or recalled. The fact that it may sometimes be found necessary to modify a penal judgment by no means justifies the assertion that such modification is an attack upon the law under which the judgment was rendered. But, even though in some cases the pardon may seek to tone down the harshness of the law in its applicability to a particular case, it does not for that reason follow that the law should be abolished in its entirety. Rousseau said: "Frequent pardons announce that crimes will soon have no further need of them, and everyone knows whither that leads." They announce nothing of

[11] Science of Legislation.

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the kind, nor is the effect necessarily as Rousseau anticipated.

Let us suppose a man to be convicted, in the State of Missouri, of the crime of murder in the second degree, and that, because of mitigating facts developed in evidence he is given the minimum sentence, which is ten years in the State penitentiary. Under the "good conduct" law he will be released in seven years and six months if his conduct in prison be found exemplary in all respects. Now suppose that if after six and one-half years of service new and additional facts in mitigation be discovered, or suppose he render some unusual and remarkable public service while in prison (such as helping to quell a mutiny), or that his health becomes so shattered that another year's imprisonment would be equal to a death sentence, or that circumstances in the domestic or other personal affairs of the criminal should develop which would make his sentence equal in the matter of punishment to double the time in other circumstances, or that owing to peculiar social conditions the community would be vastly benefitted by his release. Suppose that in the event of any one or more of these contingencies, the Governor should decide to grant a pardon at the end of six and one-half years. Would that

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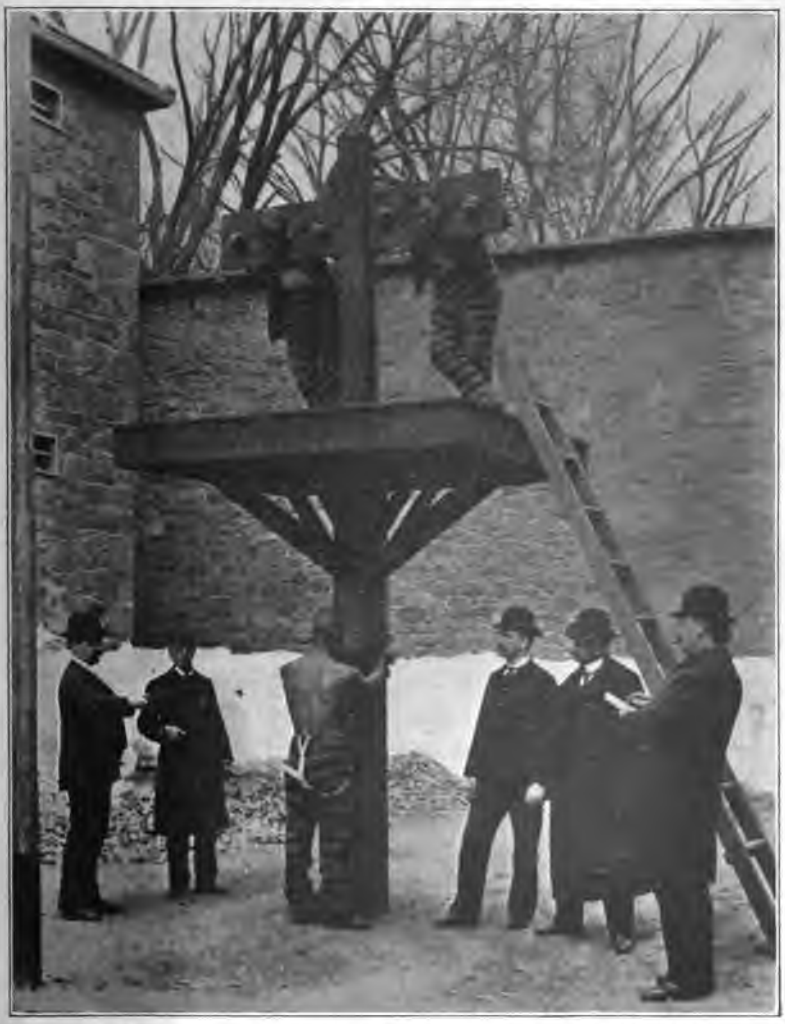

PLATE XIV.—TWENTIETH CENTURY "CIVILIZATION."
From a photograph recently taken inside the walls of an American penitentiary.

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pardon, according to Rousseau, offer new inducement to crime? Would it, as Filangeri says, be an attack upon the law? On the contrary, it would be in aid of the law, and would not breed hostility to it. The way to create public hostility toward "strict statutes and most biting laws" is to enforce them to the letter. In "Measure for Measure," this point was admirably grasped by the comprehensive genius of Shakespeare. President U. S. Grant, in his Inaugural Address, March 4, 1869, grasped the same truth when he said: "I know no method to secure the repeal of bad or obnoxious laws so effective as their stringent execution."

My own opinion is that, at least in the United States, a pardoning power should be reserved in the executive as a safeguard against judicial tyranny and in order the better to preserve the balance between the judicial, legislative and executive branches of government. But it ought to be sparingly exercised for the reasons that (1) its liberal use tends to promote either undue severity or carelessness in the courts, inasmuch as it tends to lessen their sense of responsibility; (2) it tends to incline the law-making power to look with less horror upon inequitable and vindictive punishments when the legislators realize that the execu-

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tive has power to adjust the penalties to suit the requirements of absolute justice in each case; (3) the executive office is usually so overburdened with a multiplicity of other duties that sufficient time for the proper examination of all cases cannot usually be afforded; and (4) finally, the Governors of States are usually chosen for duties entirely different from those involved in a proper exercise of the pardoning power, and it is no reflection upon them to say that they are not usually competent to pass upon the numerous and complex psycho-physical and socio-legal questions involved in a practical and extensive administration of this grave and important function. A capricious and arbitrary use of the pardoning power is, of course, always possible, but the best way to avoid that is to avoid the election of capricious and arbitrary Governors. In any form of government we may occasionally find an official like James II. of England, of whom Macaulay said "his cruelty was not more odious than his mercy." But the people are never wholly without remedy against such sovereigns as James II., as events have shown.

Clemency, as Baccaria said, is a jewel which should shine in the code. It becomes the lawmaker better than it does the executive or the

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judge. Mercy should season justice; not in the interest of charity, but for the perfection of justice. Criminal punishments should be always adjusted with a view to the cure of crime. Their rational purpose is not to destroy, but to heal; for the criminal himself is no less a victim of crime than the man he wrongs or the State whose sovereignty he offends. Perhaps, at some future time, when we know more of crime and its causes than we do to-day, we may be able to say, with Madame de Stael, that "to understand is to pardon." For the present, the pardoning power should be utilized and applied in aid of the individualization of punishment; although a better method of accomplishing that result will be found in the indeterminate sentence and parole.

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CHAPTER IX.

Indeterminate Sentence and Parole.

There is a world-wide unanimity of opinion concerning the efficacy of the parole system as a curative of crime. Its wisdom and humanity are practically unquestioned. Sometimes the parole is issued in connection with the indeterminate sentence, and sometimes, as in Missouri, pardons and commutations are issued upon parole conditions. In either event, the results have been, upon the whole, satisfactory. But, like all other remedial agencies, its practical utility depends upon administrative efficiency, and where ostensible or actual temporary failure has resulted that misfortune is in nearly every case the direct effect of incompetency in the parole officials.

When, in the *British Quarterly Review* for July, 1860, Herbert Spencer proposed the parole system, he added that "this will be thought a startling proposal." But no other system of penal

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reform every swept over the civilized world in so short a period as fifty years. Spencer's proposition was this:

"When a convict has fulfilled his task of making restitution or compensation, let it be possible for one or other of those who have known him to take him out of confinement, on giving adequate bail for his good behavior. Always presuming that such an arrangement shall be possible only under an official permit, to be withheld if the prisoner's conduct has been unsatisfactory, and always premising that the person who offers bail shall be of good character and means, let it be competent for such a one to liberate a prisoner by being bound on his behalf for a specific sum, or by undertaking to make good any injury which he may do to his fellow citizens within a specified period." The great English philosopher, however, was far too wise a man not to anticipate the many difficulties that lay in the way of a practical application of the plan. In enumerating some of these difficulties he says, ". . . above all, the difficulty of obtaining officials of adequate intelligence, good feeling and self control are obstacles which must long stand in the way of a system so complex as that which morality dictates."

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The Eighth Annual Prison Congress at Washington, D. C., while thoroughly favoring the principle of the parole of convicts under the indeterminate sentence, also adopted a resolution urging that parole boards "be so constituted as to exclude all outside influence, and should consist of a commission made up of at least one representative of the magistracy, at least one representative of the prison administration, and at least one representative of medical science." Manifestly, the system can be of little avail if bad men are released too soon, or if good men are too long confined. The scientific purpose to be attained—and a purpose which, we may add, can be attained only by scientific methods and none other—is the release of the right man at the right time. The board should be able to accurately distinguish between normality and degeneracy, between corrigibility and incorrigibility, and should be able to detect unerringly the evidences of reformation. Such skill is not a matter of accident. It does not come by chance. It is the fruit of experience, of close observation and specialization in criminological study.

To obtain the best results, the parole board should be directly connected with the control of the prison. The board, or some of its members,

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should be able to suggest and put into effect reformatory and educational prison methods as well as to observe such methods. It should have the power to control the education and prescribe the discipline of the prisoner, to release him the moment it appears that further confinement is no longer advantageous either to the prisoner or to society, and it should have the power to keep him in confinement so long as his own good or the welfare of the State shall justify his detention. The prison sentence of a criminal should in all cases be like the prescription of hospital treatment for a patient. The prisoner should remain a prisoner, either in confinement or under parole, until his reformation is completely accomplished, and when there is no hope of reformation there should be no hope of liberty.

Any man who has made a scientific study of criminals for a sufficient length of time, can select at least ten per cent of the population of any penitentiary who should never be released at any time. But it will be found that a very liberal proportion of such convicts (in states which do not employ the indeterminate sentence) are undergoing sentences of only from two to five years. Occasionally there is among them one who has been habitually a criminal, but the facts were un-

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known to the court officers at the time of his conviction. I found a number of such men serving two years for grand larceny, to be released in eighteen months under the good conduct law. Such men should not be released at all; at least not until, after long years of institutional training under proper reformatory methods, they have exhibited every evidence of complete reformation. The indeterminate sentence makes possible the discovery of these cases before their discharge.

At the meeting of the American Institute of Criminal Law and Criminology, held in Milwaukee, in 1912, a committee headed by Edwin M. Abbott, presented an exhaustive report concerning the application of the principle of the indeterminate sentence and parole to the penal codes of the various States, reaching the conclusion that "The parole system continues to grow with mighty force. The results have justified the adoption of this system of mercy." The committee further found that nearly every State which has not yet given the principle a trial now has the matter under consideration. Other states, which have not the indeterminate sentence law, are endeavoring to approximate its results by a proper exercise of the pardoning power.

We have adopted the epitome supplied by Mr.

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Abbott's committee, with the exception of the report as to Missouri, which is supplied by the author, because of slight historical inaccuracy in the report as published, and because of subsequent changes in the Missouri laws, made by the General Assembly of 1913. The new Missouri law, creating a State Board of Pardons and Paroles,[1] of which I am the author, does not meet with my entire approval, but it is perhaps the best that the Missouri constitution will permit. By use of the question-index below the reader may gain an idea as to the forms in which the principle has been applied in the various States mentioned and a model law may be evolved from a study of the whole.

QUESTIONS.

1. Who may be committed under the Indeterminate Sentence.
2. Provisions for maximum and minimum term.
3. Parole Board.
4. Duties of the Parole Board.
5. Regulation of Petition or Argument.
6. Prisoners eligible to parole.

[1] Laws of Missouri, 1913.

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7. Points considered in granting parole.
8. Conditions of parole.
9. What constitutes violation of paroles.
10. System of arrest for violation of parole and fees attached thereto.
11. Penalty for violation of parole.
12. Conditions of final discharge of prisoner from parole.
13. How paroled prisoner is finally discharged.
14. Number of violations of parole.
15. Extent of Parole system.
16. Number of prisoners now under parole.
17. Note—Miscellaneous remarks. Special provisions.

ANSWERS.

UNITED STATES (NATIONAL) (1910).

1. No provision.
2. A definite term over one year.
3. Superintendent of Prisons of the department of Justice, the Warden and Physician of each United States Penitentiary. The Chief Clerk of each prison shall be Clerk of the Board.
4. Meet three times a year; consider applications and authorize arrest for violation.

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5. Prisoner can petition but Board can act without petition.

6. All prisoners serving a definite term or terms over one year who have served one-third of the total.

7. Service of one-third of the total term; record showing observation of the rules of the penitentiary; a reasonable probability to become a law-abiding citizen, and that release is not incompatible with the welfare of society. Subject to approval of Attorney General.

8. To report to an adviser who becomes sponsor; to reside within fixed limits; to report to Board in writing each month, said report to be certified by sponsor; abstain from intoxicating liquors and not to visit saloons or places where liquors are sold; not to associate with persons of bad reputation; to work honorably and diligently and to answer all inquiries sent to him, and not to violate any other laws.

9. Breach of any of above requirements.

10. United States Marshal or any Federal officer; expenses allowed.

11. Must serve balance of term remaining at time when paroled.

12. Faithfully complying with parole until end of sentence.

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13. Automatically at end of parole.

14. One.

15. The Board of each Penitentiary limits the District, either State or County, which cannot be extended except by permission.

16. 234. (From November, 1910, to June 30, 1911.)

17. The above system has also been extended to the Reform schools for boys and girls in Washington. Where United States prisoners are in state institutions, the state laws or United States laws apply, subject to the approval of the Attorney General. Recommendation has also been made to extend the Parole Law to life prisoners after they have served a long period of years, and also to abolish the Parole boards and to appoint one official for this work, who shall report to the Attorney General for approval before paroles become operative.

ARIZONA (1911).

1. Convicts over 18 years of age, for any crime, except treason and first degree murder.

2. The maximum or minimum time now or hereafter prescribed by law for the crime.

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3. Warden of the State Prison, Governor, State Auditor, Attorney General and the Physician of the prison. The Warden will be chairman and a Parole Clerk is appointed by the Governor.

4. Meet at call to consider the case of every prisoner whose minimum has expired, for parole or absolute discharge. Where paroled prisoners have reverted or are about to revert to criminal habits, any member of the board may issue a warrant for him. The Parole Clerk also revokes parole.

5. Verbal application of the prisoner is the only form. The Warden reports on his record before and since incarceration.

6. Any person who has served the minimum, or any person serving a fixed term who has a clean record for the time served.

7. The report of the Warden and record before and since incarceration.

8. Prisoner sends report to Parole Clerk monthly; must abstain from intoxicating liquors; refrain from disreputable associations and live and remain at liberty without violating the law.

9. Any violation of the above provisions.

10. Any officer of the prison; all officers

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authorized to serve criminal process. Any officer other than the prison officer received the same fees as for execution of warrant for arrest at the place where prisoner was taken, and will receive the same fees for transportation to the prison as are paid for transportation of any convict from the place of arrest to prison. Any officer of the prison is paid expenses. If prisoner has money on deposit in the prison, fees will be paid out of it.

11. Imprisonment for balance of maximum term unless again paroled.

12. At any time Board decides he is worthy of discharge.

13. Automatically at the expiration of the maximum sentence if serving indeterminate sentence; or by expiration of his sentence if a fixed sentence. Discharge prior thereto controlled absolutely by the Board.

14. Four (between August 1, 1911, and June 2, 1912).

15. State system.

16. 68, of whom 47 are still reporting.

17. Parole Act meets favor; Indeterminate Sentence not well understood. We suggest the Indeterminate Sentence with neither minimum nor maximum limits.

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CALIFORNIA (1893-1901).

1. No indeterminate sentence.

2. All flat sentences.

3. State Board appointed by the Governor; including Wardens of the two State Prisons. Governor can revoke paroles.

4. Consider all applications, grant or refuse parole, enforce requirements of parole and revoke same.

5. All facts presented in writing. No attorney heard or argument allowed.

6. Those showing clear record for six months and against whom there are no other charges pending. Life termers after seven years.

7. Antecedents, conduct as a prisoner, length of time served; general character, habits and environment, if released.

8. To proceed directly to place of employment; if change of employment is necessary, consent of Parole Board to be first secured; report to the parole adviser monthly, report to be certified by employer. To live honorably, avoid evil association, obey the law, abstain from the use of liquor, opium, cocaine or drugs except upon prescription; under no circumstances to enter a saloon where liquors are sold or given away.

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9. Failure to obey above conditions.

10. Peace officers; there is usually a reward of $25.

11. Returned to prison and forfeit credits; serve balance of term.

12. At expiration of maximum parole preserved. May be discharged sooner by Board.

13. The Governor.

14. 228, until February, 1912.

15. State system.

16. 419 (February, 1912).

17. Parole system considered favorably.

COLORADO (1899-1907).

1. Any person sentenced for prison offense other than life.

2. Minimum not to be less and maximum more than prescribed by law for the crime committed.

3. Governor and four members appointed by him.

4. To parole prisoners under proper regulations.

5. Blank petitions furnished by Warden after prisoner has served one year. Governor or member of the Board may suggest earlier application.

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6. At expiration of minimum.

7. General conduct before and since imprisonment.

8. To report monthly for one year, and thereafter once every three months until expiration of maximum and to abide by such rules and regulations as the Warden of the penitentiary and the Governor of the state may from time to time require.

9. Failure to observe above conditions, or leave state without permission.

10. Warrant of the Board of Commissioners approved by the Governor. No fees.

11. Must serve maximum, time on parole not to be included.

12. Service of maximum in prison or on parole.

13. Automatically.

14. No number given.

15. State system, but prisoners may leave state after signing agreement to return as required by Governor, and upon signing bond with sureties for costs of return.

16. No answer given.

17. Parole law not so effective as it should be. Not sufficient parole officers. This curtails useful work in securing employment for parole prisoners. The people desire the system extended.

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CONNECTICUT (1901-02).

1. All persons (except tramps) committed to prison or reformatory.

2. The maximum not greater than specified by law; the minimum not less than one year.

3. Board of Directors, the Superintendent and Warden in each case.

4. To control parole and find employment for paroled prisoners.

5. Prisoner appears in person; no argument by outside persons or attorneys.

6. Those having served minimum term of at least twelve months.

7. Prison record; likelihood of return to orderly life outside; employment.

8. Must go direct to place of employment; report monthly to warden; must not change employment without permission; must not frequent saloons.

9. Acting contrary to agreement or leading disorderly life.

10. Any public officer, constable or sheriff; usual fees for similar services.

11. Return to serve maximum term.

12. By expiration of maximum or unanimous

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vote of all members of Board at any stated meeting.

13. By the Board of Parole.

14. Twenty-four.

15. State system.

16. 122.

17. There has been great prejudice against the Indeterminate Sentence. Courts make the maximum and minimum sentence close together, limiting parole. Parole is gaining in favor.

IDAHO (1907).

1. All convicts except for treason or murder of first degree.

2. Maximum shall not exceed the longest term fixed by law; the minimum shall not exceed one-half of the maximum fixed by statute, and no minimum to be less than six months, and where the maximum may be for life or a number of years the court shall fix maximum.

3. Prison Board: The Governor, Secretary of State, Attorney General and Warden of the penitentiary.

4. Consider the record of trial, investigate career of prisoner, disposition and all facts likely

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to show capability of again becoming good citizen, to adopt rules to prevent criminals from returning to career and help secure self-support and accomplish reformation; arrange for support upon release.

5. Not stated.

6. Prisoners of good behavior who have served minimum.

7. Discretion of the Board.

8. To abide by requirements of the Board to be law-abiding and continue in employment.

9. Failure to observe above requirements.

10. Any officer named in warrant issued by Warden and certified by Clerk of the prison. No fees mentioned.

11. Re-arrest, and imprisonment for balance of term.

12. Faithful observation of parole.

13. Automatically at expiration of parole upon request of Warden.

14. Five, April 12, 1912, (covering a period of five years).

15. State, (but not definitely set forth).

16. 40, on April 12, 1912.

17. There is general satisfaction under this system.

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INDIANA (1897).

1. Any male person thirty or over, convicted, except of treason, first and second degree murder.

2. As provided by law.

3. Warden, three Directors, Chaplain and Physician.

4. Meet when necessary and pass on applications for parole.

5. Only printed form allowed; no attorney can represent petitioner.

6. Prisoners having served minimum.

7. Life history, demeanor, education, work in prison, ability to live lawfully and keep employed.

8. Must continue in employment and report regularly.

9. Failure to abide by agreement or evidence of return into criminality.

10. Any peace officer with warden's or agent's warrant. Same fee as bringing man to prison.

11. Must serve maximum unless sooner released by Board.

12. When Board is satisfied he will live orderly if freed from parole restrictions.

13. Parole board.

14. Not given.

15. State system.

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16. Not given.

17. Warden can appoint parole agent to secure employment and look after paroled men. The system gives satisfaction.

ILLINOIS (1899).

1. Every male over 21 and every female over 18 convicted of felony, except treason, murder, rape and kidnaping.

2. The maximum shall not exceed maximum provided by law; the minimum not less than one year, making allowance for good time, as provided by law.

3. The State Board of Pardons of three members appointed by Governor with advice of Senate. Warden is advisory member.

4. Adopt necessary rules, secure employment for paroles. Give audience to and parole inmates.

5. Friends or Attorneys of prisoners can make arguments.

6. Prisoner must serve at least 11 months unless old offender, when 21 months must be served.

7. History, parentage, education, conduct in prison, ability to live orderly outside.

8. Reputable employment and a home free

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from criminal influence, must report to the sheriff, who must investigate and forward report to Warden. Abstinence from use of liquor.

9. Prisoners leaving the state, committing crime, associating with direputable characters or visiting saloons.

10. Warden's warrant.

11. Forfeiture of parole and service for as much of balance of term as Board thinks proper.

12. Where prisoner has served parole 12 months; Board makes order for discharge, which when approved by Governor is final.

13. Board of Pardons with approval of Governor.

14. About 80 a year.

15. State system.

16. About 700 a year.

17. Some dissatisfaction with present law; many feel jury or trial judge should fix term of imprisonment.

IOWA (1907).

1. Any person over 16, convicted of felony except treason or murder.

2. Maximum not more than provided by law; no minimum set forth.

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3. Three citizens appointed by Governor with advice of Senate.

4. Prepare rules, keep in communication with and assist men on parole.

5. No petition or argument allowed except upon request of Board.

6. Those having served 11 months except where maximum is 2 years or less, then 6 months.

7. Record and character before and after commitment; nature of the crime, future environment, personal impressions of applicant.

8. Must remain in state, have permanent employment, report monthly, live honestly, avoid evil associations, not change residence without permission.

9. Breach of any of requirements.

10. Any officer with order of Board, certified by Secretary. Fees same as Sheriff.

11. Must serve maximum, time upon parole not counted.

12. Twelve months' service of parole acceptably and if likely to be reliable and trustworthy in the future.

13. Governor upon recommendation of Parole Board.

14. Not given.

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15. State system.

16. Not given.

17. System appears to be working satisfactorily, particularly as complete trial record is furnished Board by County Attorney and Court Clerk.

KANSAS (1903).

1. All convicts, except for murder or treason.

2. Minimum and maximum prescribed by law, subject to control of trial judge.

3. Three members of Parole Board. This Board has charge of penitentiary and state reformatory. At penitentiary, Warden is Secretary and member of Board.

4. Hear and recommend for parole to Governor from the penitentiary. The Governor's approval not necessary from reformatory.

5. No petition or argument allowed.

6. All prisoners having served minimum with six months of clear prison record except those committed for murder in the first or second de gree, or serving third term.

7. Prisoner's desire and ability to become law-abiding citizen. Record for industry and conduct while in prison.

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8. Secure employment; report immediately; not change employment without permission; spend evenings at home; attend church at least once each Sunday; abstain from all intoxicating liquor, avoid evil associates and improper places of amusement; obey and respect the laws. That he live with wife or mother, and support them.

9. Any violation of above rules.

10. Warden's warrant served by any officer. No fees.

11. Must serve balance of unexpired term.

12. Can be discharged at any time after faithful parole of six months.

13. The Governor.

14. About 60 during 1911.

15. State system (although not specifically set forth).

16. About 400.

17. General satisfaction, with a request for stronger equipment of Parole Board. As much thought, investigation and care should be used in determining a man's fitness to return to society as is applied in ascertaining his unfitness for society.

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KENTUCKY (1910).

1. Convicts over 30, subject to prison term, or an habitual criminal or incorrigible at reformatory.

2. Provided by law.

3. Board of four penitentiary commissioners.

4. Parole in their discretion. Direct arrest of violators.

5. Not set forth.

6. Those having served minimum and life prisoners having served five years. All must have good behavior record for 9 months.

7. Not stated.

8. Employment for six months or sufficient sustaining income; report monthly, live orderly, obey laws and abstain from drink.

9. Breach of requirements or any other reason sufficient to the Board.

10. Any officer with warrant signed by chairman of Board. Expense paid.

11. Re-imprisonment until further action of Board.

12. Exemplary conduct on parole for 12 months.

13. Board of penitentiary commissioners.

14. Not given.

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15. General; (need not remain in the state).

16. Not given.

17. Generally satisfactory; a special agent of the state looks after employment and conduct of paroles, and assists them in every way possible. Visits them frequently.

MASSACHUSETTS (1884-86).

1. Any convict sentenced to State Prison except for life or as habitual criminal.

2. Minimum not less than 2½ years. Maximum not more than prescribed by law. Additional sentence begins at expiration of first minimum.

3. Five Prison Commissioners appointed by Governor with consent of Council.

4. Consider applications for parole and general supervision over all parole matters.

5. No petition necessary.

6. Must parole at expiration of minimum if record has been perfect; otherwise, date is set by Commissioners.

7. Prison record.

8. Shall not lead idle or dissolute life, must abstain from bad company and intoxicating drinks.

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Report when required. Must not become a dependent upon charity.

9. Violation of any of conditions.

10. Any officer on Warrant of Governor, Prison Commissioners or duly authorized official.

11. Detention according to terms of original sentence. Period of liberty not credited. May again be paroled.

12. At expiration of maximum.

13. Automatically, at expiration of maximum.

14. 617 in 1911.

15. State System (although not definitely set forth).

16. 853 on July 29, 1912.

17. The Governor and Council are given power to issue parole to habitual criminals. This covers the remainder of term of sentence and may be upon such terms and conditions as they prescribe. The entire parole system is commended.

MICHIGAN (1905).

1. All convicts except life.

2. Minimum not less than six months. Maximum not more than provided by law. Judge can recommend proper maximum.

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3. Governor and Advisory Board of four. In some instances Governor alone; Warden makes recommendation.

4. Adopt rules and supervise entire parole system.

5. Personal application only once a year.

6. All convicts except third termers at expiration of minimum, whose periods of parole must not exceed four years.

7. Record of the case, life in prison and character.

8. Must leave the county, have honorable employment with responsible person, and report monthly. Must not visit saloons or keep bad company.

9. Any reason satisfactory to Warden or Superintendent.

10. Any officer named in Warden's Warrant; no fees set forth.

11. Must serve maximum. Time at liberty not counted.

12. Faithful observance of requirements until expiration of parole. This period is fixed at the time of parole.

13. Governor, Advisory Board, Warden.

14. Not given.

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15. State system, but paroled prisoner must not return to county wherein he was confined.

16. Not given.

17. Governor can act independently, but usually relies upon his advisory board after recommendation from Warden. The system gives satisfaction.

MINNESOTA (1911).

1. All convicts except for treason or murder.

2. Maximum shall not exceed maximum provided by law. Minimum not stated.

3. State Board of Parole; three members, President of the Board of Control, Warden of Prison and a citizen appointed by Governor.

4. To regulate and control entire Parole system.

5. Not necessary, but not prohibited.

6. All prisoners, in Board's discretion, except life prisoners, and life prisoners after service of thirty-five years less commutation for good behavior.

7. Previous history, physical or mental condition, character, prison record.

8. Steady employment; refrain from crime, report regularly, avoid evil associations and the

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use of intoxicating liquors. Must not marry while on parole without consent of Board.

9. Violation of any of the conditions of parole.

10. Agents designated by Board. Under salary and receive traveling expenses.

11. Re-imprisonment and loss of grade.

12. Faithful observance of parole.

13. Governor, upon recommendation of Board.

14. About one out of five or six.

15. State system.

16. 62 on April 17, 1912, from the State Prison.

17. Generally favorable. The Indeterminate sentence is new, but the Parole Act has proven very satisfactory.

MISSOURI (1913).

1. No such law.

2. No such law.

3. Board of Pardons and Paroles, composed of three persons appointed by the Governor.

4. To investigate all applications for executive clemency, meet once in each month and make recommendations to the Governor.

5. Petition must be supported by statements from trial judge and prosecuting attorney, and

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recommendation of jury if trial was had; affidavit of publisher that three weeks' notice of application was given in one newspaper in county where crime was committed.

6. All persons under conviction for any offense.

7. Previous history, physical and mental condition, character, prison conduct, mitigating facts and circumstances.

8. Steady employment, refrain from crime, report regularly, abstain from bad associates, intoxicants, etc.

9. Breach of the conditions.

10. Warden's warrant, by the order of the Governor.

11. Serve remainder of sentence.

12. At expiration of term by operation of law unless sooner pardoned by the Governor.

13. By operation of law upon expiration of sentence.

14. Not stated.

15. Applied to all penitentiary convicts.

16. Not stated.

17. The Governor is not bound by the recommendations of the Board of Pardons and Paroles, and his power under the Missouri constitution cannot be limited. Sec. 8, Art. 5, of the constitution provides:

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"The Governor shall have power to grant reprieves, commutations and pardons after conviction, for all offenses except treason and cases of impeachment; upon such condition and with such restrictions and limitations as he may think proper, subject to such regulations as may be provided by law relative to the manner of applying for pardons."

Under this constitutional provision the form of clemency usually employed by the Missouri Governors was the unconditional pardon. This prevailed with few exceptions until Joseph W. Folk became Governor in 1905. Early in that year the author of this volume, as Pardon Attorney under Governor Folk, prepared the first parole order ever issued in the State. Substantially the same form of order was used by Governor Hadley, who succeeded Governor Folk, and with slight changes the same form is still in use under the present Governor, Elliott W. Major.

This order, however, strictly speaking, is not a parole, and the Governor has no power under the constitution *eo nomine,* to grant a parole. The order is simply a commutation of the sentence under conditions similar to those usually found in a parole. However, it lacks the effectiveness of a parole, inasmuch as the State has no parole offi-

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cer, nor is any bond required for the observance of the parole conditions. The system has, upon the whole, been more satisfactory than the old system of unconditional pardons. The system of court paroles, however, obtains in Missouri, as in most other States.

MONTANA (1907).

1. No such law.
2. No provision.
3. State Board of Prison Commissioners.
4. To consider and supervise all questions of parole.
5. No petitions or arguments allowed.
6. First offenders for felony having one-half of term, except service of twelve and one-half years where term was more than twenty-five years, and life prisoners having served twenty-five years, less commutation for good behavior.
7. Previous history and character. Record in prison.
8. Report regularly; secure employment, and remain in State.
9. Any violation of above conditions.
10. Any officer with warrant of Board of Commissioners.

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11. Loss of good time; punishment in the County Jail, or return to complete unexpired term.

12. Faithful fulfillment of requirements.

13. The Governor, upon recommendation.

14. Not stated.

15. State System.

16. Not stated.

17. An important feature in securing parole, is recommendation by the Warden for good conduct, service and diligence in performing work or labor directed by the Prison Board. This System is giving satisfaction.

NEBRASKA (1911).

1. All over 18 convicted of Penitentiary offense, except murder, treason, rape, kidnaping or having served two previous terms.

2. Provided by law.

3. State Prison Board appointed by Governor —one member to be practicing physician and one a practicing attorney.

4. To investigate record of trial and career of prisoner before conviction; to call upon any person for information as to capability of prisoner

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to become a good citizen; examine prison record. To make Rules for, grant and imprison for breach of parole. Arrange for employment and secure suitable homes free from criminal influences.

5. The Secretary of Board presents applications and no Petition or argument allowed.

6. Those having served the minimum.

7. Prison Record and ability to live law-abiding life.

8. To obey the law, follow honorable and useful employment and keep free from criminal influence.

9. Violation of conditions of parole, or commission of new crime.

10. Board order to Warden certified by Secretary directed to any officer. No fees.

11. Service of unexpired maximum, and if returned for new crime, second sentence follows termination of former.

12. Six months' faithful observance of parole requirements, Secretary reports to Board, who issues certificate, which is sent to Governor.

13. Governor upon recommendation of Board.

14. One, (up to April 6, 1912).

15. General, (although not specified).

16. Fifty-two (on April 6). Of this number,

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thirty-four under present, and eighteen under old law.

17. The general public consider the system satisfactory. When prisoners are released they are provided with clothing, $10.00 in money and transportation to place of employment.

NEW HAMPSHIRE (1909).

1. Any convict sentenced to State Prison, except for life, or as habitual criminal.

2. Provided by law for each offense.

3. Governor and Council.

4. Have complete charge of parole.

5. Automatically, no petitions needed.

6. Automatically at expiration of minimum sentence if obedient to the Rules; otherwise Governor and Council determines.

7. Ability to live orderly and become good citizen.

8. Report monthly and oftener, if requested, avoid bad company, obey the laws.

9. Any violation of above conditions.

10. Parole Officer makes complaint before any Justice of the Peace, who issues warrant. No fees.

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11. Serve maximum, time upon parole not considered.

12. Faithful observation until expiration of maximum.

13. The Governor.

14. Twenty-seven (on May 1, 1912).

15. State system.

16. Sixty-one (May 1, 1912).

17. General satisfaction with both the Parole and Indeterminate Laws. The Chaplain, who is the Parole Officer in this State, has supervision of parole matters.

NEW JERSEY (1911).

1. All convicts sent to State Prison, except first degree murder.

2. Maximum as provided by law; minimum not less than one year, and not more than one-half of maximum. Where death sentence has been commuted, minimum must be twenty-five years.

3. Board of Pardons, composed of six lay Judges of the Court of Errors, the Chancellor and Governor. Under Indeterminate Sentence Law, Board of Inspectors of the Prisons are also vested with parole power at expiration of mini-

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mum sentence, but Inspectors can only act after approval by Governor.

4. To remit fines, parole, commute sentences and restore rights of citizenship.

5. No one except applicant is permitted to argue before the Board. Counsel may file Petition.

6. Prisoners whose minimum term is about to expire.

7. Circumstances surrounding the case; prison record, previous history, prospects of employment, ability and desire to lead correct life and maintain self by honest labor.

8. Avoid evil company, avoid all forms of liquor, live industriously, honestly and report regularly. Must not leave State without permission.

9. Any breach of above requirements.

10. Any duly authorized officer. Expenses only.

11. Service of balance of term subject to future action by Board.

12. Faithfully observing conditions of parole until maximum has expired. Prisoners on parole can earn commutation and thus have maximum expire sooner.

13. Automatically at expiration of maximum;

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which can be advanced by living a law-abiding life.

14. Thirty-five (until January 1, 1912).

15. State System (but permission can be secured to leave State).

16. 1,370 (since inception of Parole Law in 1905), 104 during 1911.

17. The Parole system is considered very successful, and is being extended under the Indeterminate Sentence Law. Eleven prisoners have also been twice paroled successfully. It has also been made applicable to prisoners serving flat sentences, the minimum being computed to one-half of a maximum, which the Court of Pardons may determine.

NEW MEXICO (1909).

1. All prisoners sentenced to Penitentiary.

2. Court fixes minimum and maximum.

3. Prison Board composed of the Board of Penitentiary Commissioners and Superintendent of the Penitentiary. Governor must approve recommendations.

4. Investigate the record of the crime, previous history as to industry and character, to parole, rearrest, and generally supervise prisoners.

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5. No petition or application allowed.

6. All prisoners having served minimum except those having served two previous terms in any Penitentiary.

7. Prison record showing improvement or deterioration of character and probability of becoming a law-abiding citizen. Personal history and complete prison record.

8. Total abstinence from alcoholic liquors. Permanent employment. A proper and suitable home free from criminal influences.

9. Faithful observance of the requirements.

10. Warrant of Superintendent of Penitentiary to any authorized officer. Fees same as ordinary criminal process.

11. Service of unexpired maximum, additional imprisonment and time on parole not counted.

12. Superintendent keeps in communication with all prisoners. When prisoner has served not less than six months of his parole acceptably, Superintendent reports to Board, which recommends final discharge. Said recommendation is sent to Trial Judge, who enters order, which upon approval of Governor, constitutes complete discharge.

13. Superintendent reports to Board to rec-

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ommend to Trial Judge, who certifies to Governor, who finally discharges him.

14. Not given.

15. General.

16. Not given.

17. This System is regarded very favorably. All prisoners released upon parole are supplied with suitable clothing, $5.00 in money, and transportation to place of employment.

NEW YORK (1889-1909).

1. All first offenders convicted of felonies other than murder of first or second degree.

2. In all cases where the law provides maximum of five years or less; the maximum to be as prescribed by law, the minimum to be not less than one year; where minimum is fixed by law, not less than such minimum and the maximum not more than the longest period fixed by law. For second degree murder a minimum of twenty years and the maximum of life.

3. Board of Parole for State prisoners composed of three members—Superintendent of Prisons, and two oppointees of Governor with consent of Senate.

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4. To regulate the system of credits to be earned by prisoners as a condition of release by parole to investigate and recommend for and control prisoners on parole.

5. Prisoners apply in writing; no other form allowed.

6. All prisoners having served minimum.

7. Criminal character, conduct, record of demeanor, education and labor while in prison.

8. Indulge in no injurious, unlawful or vicious habits. Shall avoid persons or places of disreputable or harmful character; report regularly; permit visit from Probation Officer at abode or elsewhere; answer all reasonable inquiries as to conduct or condition; work faithfully at suitable employment; remain or reside within a specified place or locality; abstain for a reasonable period from use of alcoholic beverages; make reparation or restitution for losses caused by offense; support wife or children.

9. Breach of any above conditions.

10. Warrant to any officer from Agent or Warden or any member of Board. Regulation fees as in other cases.

11. Service of unexpired maximum unless sooner released again on parole.

12. When the Board consider convict will live

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and remain at liberty without violating the law; or upon action of Governor.

13. The Board, if serving indeterminate sentence; Governor upon recommendation of Board if original sentence was determinate.

14. 704, on January 1, 1912.

15. State System (although permits have been granted to return to home State).

16. Total paroled October 1, 1911, 3,894. On that date there were at large in good standing, 665, and delinquent 413.

17. Note.—Over 83 per cent of the prisoners paroled in 1910 and over 81½ per cent in 1911, made good. There is also a system for paroling prisoners who have received flat sentences. The entire Parole system is considered favorably.

NORTH DAKOTA (1911).

1. Anyone convicted of felony.

2. Maximum prescribed by law; minimum determined by Board.

3. Board of Experts, consisting of Warden, Prison Physician, a Prison Chaplain and one other person designated by the Board of Control.

4. Meet monthly; pass on applications for

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parole and applications for release under Indeterminate Sentence.

5. Blanks furnished; no oral arguments allowed, but written argument may be submitted by attorneys or others.

6. Anyone having served minimum term; employment must be secured and employer recommended by Judge of his County Court; must deposit $20.00, and employer agrees to retain 25 per cent of wages to deposit with Warden until $100.00 is on deposit; good record at Penitentiary for six months.

7. Prison record; nature and character of crime committed; previous record and environment; information gained from personal interview with applicant; probable surroundings if paroled.

8. To refrain from crime, to lead an honorable life; to remain within the State; to proceed at once to place of employment, to remain there until granted permission to leave; to report regularly; to conduct himself honestly, avoid evil associations, obey the law, and abstain from the use of intoxicating liquors; to immediately report to sponsor and show parole and enter upon employment provided for him.

9. Anything within discretion of the Board of Experts.

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10. Any officer. Regulation fees, but not to exceed $100.00.

11. Service of balance of maximum; time on parole excluded.

12. Expiration of the maximum.

13. Warden of the Penitentiary.

14. No violations up until April 4, 1912.

15. State system.

16. 35, up to April 4, 1912.

17. The law is considered very favorably in this State. Certain inmates cannot be paroled; namely, a person convicted and sentenced for first or second degree murder, and a person finally convicted in any jurisdiction of felony other than that for which he is being punished. The Governor also must approve and endorse the recommendation for parole.

OHIO (1891).

1. Compulsory with all prisoners sent to the State Reformatory, and optional with prisoners sent to State Penitentiary.

2. Optional with Trial Judge, but minimum cannot be less than prescribed by law for offense

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committed, nor maximum greater than prescribed by law.

3. Board of Administration, composed of eight members—a President and two other lay members, a Physician, a Fiscal Supervisor, a Mechanical Engineer, a Secretary and a Parole Secretary.

4. Supervise the entire parole system.

5. Blanks are supplied by the Chaplain and no other form of Petition allowed; no argument allowed.

6. Those recommended by the Warden and Chaplain, who have served a minimum of not less than one year, whose conduct in prison has been of the first grade for six months prior to application; who have never been convicted of felony heretofore, and in cases of life prisoners, those who have served twenty-five years. An agreement, from a reliable property owner certified from the Auditor of the County that he is a property owner, that he will give prisoner employment upon release.

7. Previous history, prison record, ability to become law-abiding citizen.

8. To immediately report to employer, to show certificate of parole and remain in employ during term of parole unless change is authorized

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by parole secretary; to report regularly; to remain within State; to live honestly, avoid evil associations; obey the law and abstain from the use of intoxicating liquors.

9. Anything in the opinion of the Board of Administration or Field Officer contrary to agreement.

10. Any authorized officer; no fees set forth.

11. Serve unexpired period of maximum, period of probation not to be counted.

12. Upon certificate showing faithful compliance with parole agreement.

13. Board of Administration and Wardens.

14. 14 per cent in 21 years.

15. State System.

16. 2,180.

17. General satisfaction is felt in Ohio with this system. The separate Board of Administration is a new feature of the law making the parole and pardon of prisoners entirely independent of each other.

OKLAHOMA.

1. No such law.
2. No provision.
3. The Governor.

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4. As set forth in the Constitution.

5. No provision.

6. At any time.

7. Any points that may be desired by the Governor.

8. The Governor has the right to impose any conditions in his discretion. Those usually imposed are that prisoner abstain from use or handling of intoxicating liquors; refrain from gambling or conduct games of chance; find industrious employment; avoid evil associates and improper places of amusement; obey the laws and conduct oneself in all respects as an upright citizen. Report as to whereabouts and occupation.

9. Any violation of the law or the conditions of parole.

10. Any sheriff or police officer of the state. No fees.

11. Service of unexpired balance of original sentence.

12. Service of entire sentence, unless discharged sooner by the Governor.

13. The Governor, or automatically at expiration of sentence.

14. Forty-two (on March 29, 1912).

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15. State or general, as prescribed by the Governor.

16. About 150 (on March 29, 1912).

17. This system has given general satisfaction.

PENNSYLVANIA (1909-11).

1. Any person sentenced to the penitentiary.

2. In the discretion of the trial judge, but maximum cannot be more than prescribed by law.

3. Board of five prison inspectors for each penitentiary, who report to the Board of Pardons —consisting of Lieutenant Governor, Secretary of the Commonwealth, Attorney General and Secretary of Internal Affairs, three of whom must recommend to the Governor for final action.

4. To investigate, make rules and regulations, and send report to the Governor with favorable or unfavorable recommendation.

5. Petition is made by applicant but no argument allowed.

6. Persons having served minimum and in good standing. Application can be filed any time within three months of the expiration of minimum term.

7. There are no other indictments pending against applicant; that the Warden and Chaplain

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recommend parole; that the applicant has a sponsor who will report regularly; a complete statement from the prisoner concerning past record; applicant shall give reasons why parole should be granted. Applicant must be in honor class showing record in prison.

8. Must secure a sponsor; must live law-abiding life; must report regularly; must keep employment; must not leave state without permission. Sponsor must report monthly as to the conduct of his charge and the number of days employed during the month. Parole must leave specimen of handwriting with Board; must furnish Board with names and addresses of all immediate relatives and the name of all persons who might maliciously interfere with the convict's attempt to live a law-abiding life.

9. Any breach of parole conditions.

10. Any officer; no fees specified.

11. Imprisonment for the balance of unexpired maximum (time on parole not to be considered) unless again released on parole, or pardoned.

12. Expiration of maximum or the Board of Inspectors may sooner recommend absolute pardon to the Board of Pardons, who recommend to the Governor.

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13. Automatically at expiration of term, or upon pardon by the Governor.

14. 28 (from July 6, 1909, until December 31, 1911).

15. State system, but permission may be obtained for employment outside state if home is maintained within state.

16. 978 (from July 6, 1909, to December 31, 1911).

17. The Indeterminate sentence and Parole system have met with the general approval of all humanitarians and persons who best know the criminal. A system of parole has also been established applying to inmates of county prisons, workhouses and reformatories. This system is entirely under the control of the trial judge, who can parole and re-parole in his discretion.

SOUTH DAKOTA (1911).

1. All first offenders over 16, subject to a penitentiary sentence, except for treason or murder, or convicts with abnormal tendencies.

2. Prescribed by law.

3. The Board of Charities and Corrections, including one Parole Officer.

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4. To regulate the parole of prisoners and co-operate with them while on parole.

5. Prisoner may petition. No argument.

6. Those having served minimum.

7. Character of applicant; standing during confinement and the party with whom he is paroled.

8. Absolute good behavior and attempt to reform.

9. Any attempt at wrong doing.

10. Any officer; no fees prescribed.

11. Returned to the prison to serve maximum.

12. Faithfully observing parole conditions until maximum has expired.

13. Order of Warden and Board of Charities and Corrections at expiration of parole.

14. Three (on April 3, 1912).

15. State system.

16. Twenty-five.

17. The general opinion is the Parole laws work for the good of the prisoner, and are regarded satisfactorily.

TEXAS (1911).

1. No such law.

2. As prescribed by law.

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3. Three Prison Commissioners, requiring the approval of the Governor.

4. To regulate the whole system of parole of prisoners.

5. No arguments allowed; a petition may be presented with the application.

6. Any prisoner with good conduct for twelve months, who has served the minimum term for the offense of which convicted.

7. Trustworthiness and suitable employment.

8. Must report promptly to employer, work and conduct himself properly at all times. Make monthly reports of work, money earned, expended and saved; with varification by employer.

9. Any matter in the discretion of the Commission.

10. Any officer, upon Commission's warrant. Reward of $25.00 is paid.

11. Loses credit for all good time, is fined 25 cents a day for all good time lost, to be taken out of the per diem of 10 cents which is allowed under the law. Must serve balance of maximum.

12. Automatically, at the expiration of time originally given in sentences, but Commission has power to grant absolute discharge in deserving cases before the expiration thereof.

13. Automatically or by the Commission.

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14. Three (since March 11, 1911).

15. State system.

16. Forty-nine.

17. The law is not generally understood, but has not been given sufficient time to secure confidence of the people.

WISCONSIN (1907).

1. No such law.

2. No such provision.

3. State Board of Control of five members.

4. Meet quarterly; consider applications for parole. All applicants are interviewed personally.

5. The Board considers all literature submitted, but no verbal argument allowed.

6. Prisoners in State Prison who have served one-half of sentence, except life termers who can not be considered until they have served 30 years, less commutation, which is 16 years and three months. No convict previously convicted of felony is eligible.

7. Previous history, prison record, future prospects as to becoming law-abiding citizen.

8. Secure satisfactory employment, and both applicant and parole guardian report monthly. Must not use intoxicating liquors.

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9. Fail to perform duties imposed; submit false reports or commit new offense.

10. Parole officer; no fee.

11. Must serve balance of unexpired sentence.

12. Automatically, at the expiration of sentence, less commutation for good behavior.

13. Warden of the State Prison.

14. About 12 (since 1907).

15. State System.

16. 200 (on March 26, 1912).

17. This law has given great satisfaction; more than 400 have been paroled since 1907, with very few violations. A Parole officer is constantly traveling, looking after paroled convicts and making reports as to their present conditions.

WYOMING (1909).

1. All convicts sentenced to penitentiary otherwise than for life.

2. The maximum not longer than maximum fixed by law, and minimum not less than minimum prescribed. Both can be regulated by trial judge.

3. Pardon Board composed of five members, who are elected. The Governor issues parole upon their recommendation.

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4. Consider the question of parole and make recommendations to cover the same.

5. Prisoner applies to the Board through the Warden of penitentiary, upon blank applications. No other petition allowed nor argument permitted.

6. No parole will be granted to any prisoner who has returned from parole as a delinquent; who has served a previous term in any penitentiary; who has not served the minimum term fixed by law, or the minimum term fixed at the time of sentence by the trial judge; who has violated any of the rules of the penitentiary within six months prior to his application, or who has committed an assault with a deadly weapon upon any officer, employee or other convict in the state penitentiary.

7. Previous history, previous associations, prison record, ability to become law-abiding citizen.

8. Secure employment, report regularly, remain in state unless granted permission to remove; abstain from use of intoxicating liquor, avoid evil associations, avoid improper places of amusement, live law-abiding life.

9. Violation of any of above, or any special conditions imposed.

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10. Any officer specified in a warrant from the Governor. The fees as for ordinary criminal process.

11. Service of the balance of unexpired maximum.

12. Automatically at expiration of maximum, or sooner, if commutation for good behavior reduces maximum.

13. Automatically.

14. Four (since February, 1909).

15. State System (but permission may be secured to go elsewhere).

16. Forty-two (between February 24, 1909, and April 2, 1912).

17. This law is favorably regarded. Efforts which prisoners have made to live up to the requirements of parole, indicate this law was a step in the right direction. The State Board of Charities and Reform continually keep in touch with paroled prisoners, counsel and advise them.

That the indeterminate sentence and parole is highly practical in its results is illustrated by some recent statistics from the State of California. State Parole Officer E. H. Whyte, in a monthly report to the California State Board of Prison Directors, issued in 1912, showed that 1,197 men

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paroled from San Quentin earned $748,679.85, and saved out of that amount a total of $190,-499.12; while a total of 400 men paroled from Folsom earned $252,524.02, and saved $60,-984.78—a grand total of $1,003,203.87 earned, and $251,483.90 saved.

A review of Mr. Whyte's report for May, 1912, which follows, can leave no doubt as to the efficacy of the parole in California:

"Parole Officer Whyte's report for the month on this same subject is illuminating, as showing the workings of the parole system, which requires of each man thus liberated a monthly report of his conduct, his cash account, his manner of earning a living, his associates.

"The earnings of all the men on parole in the month of May were $16,848.28; their expenses were $12,532.16; their savings, $4,316.12. This statement refers to 465 men on parole at the beginning of the month—342 from San Quentin and 123 from Folsom. They are at work. The terms of their parole demand that they be continuously employed. Idleness breeds crime.

"Whyte in the course of his month's work must get a report from every man under his supervision. His report tells that he has received visits at his office from 170 and has himself called on 143.

"Almost as illuminating as the record of the

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paroled men's wage-earning ability is the record of violations. Whyte in his report goes back to the year 1893, and shows that of the 1,637 men released on parole, 1,388 'made good.' That is, 84.8 per cent kept the faith with the prison directors and fully justified the confidence reposed in them.

"Since 1893 only 249 men violated the strict conditions of their parole—that is, entered saloons, left the state, failed to report or neglected the smaller rules set up for their own protection, as well as the safeguarding of society at large. Of this number, 153 were returned to the penitentiaries. Of these 249, too, only 22 committed new crimes. That is, out of 1,637 paroled men only 22, or 1.3 per cent, went back to a life of lawlessness.

"The success of the parole law is therefore wonderfully demonstrated by a ratio of 1.3 per cent, of disappointing ones to 98.7 per cent of men who, once gone wrong, took advantage of the opportunity to keep out of further trouble."

It is doubtful if there has ever been accomplished a greater or more beneficent reform than that which is being worked out through the indeterminate sentence and parole. The system, to be sure, is not yet perfect. Improvements must be made in the direction of still greater flexibility in order to complete the work of individualization. Strictly speaking, to be purely indeterminate

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a sentence should be without either maximum or minimum. Moreover, too great technicality should be avoided in the formation of rules for the parole boards. The discretion of the board should be practically unlimited, and the board should in all cases have power to waive compliance with technical rules in order that all conceivable cases may be brought within the scope of its beneficent powers.

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CHAPTER X.

The New Penology. .

First of all, the new penology demands the abolition of the penitentiary system. The penitentiary is an anachroism. It does not belong to modern civilization. It belongs to the day of the Bastile. It has destroyed more men than it has ever made, and wrecked more lives than it has ever saved. A few have been reformed in spite of it; none because of it. Most men who have strayed from the paths of rectitude can be led again into the ways of righteousness and peace; none can be driven to aught but savagery. Here is sharply drawn the line of demarcation between the old penology and the new.

Imprisonment is not primarily for the purpose of punishment. Its primary function is to segregate the individual from society for the purpose of accomplishing his regeneration; other func-

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tions being subsidiary and incidental. To achieve that result he must be surrounded by every possible educative and uplifting influence. The penitentiary, therefore, must give way to the reformatory.

The reformatory system does not imply freedom from restraint, or total lack of punishment. But it does involve the idea of mental and physical training, a graduated scale of rewards and punishments, and segregation by means of an individual cellular system, as fundamental features of the carceral idea.

Olivecrona[1] ascribed the prevalence of recidivation in Sweden to the vices of the penitentiary system, "and to the custom of submitting young offenders to the same discipline as adults." As to this there is no substantial difference of opinion among criminologists anywhere in the world. The herding together of men in large numbers and the indiscriminate commingling of criminals of all types, ages, and conditions, selling them into slavery under the contract labor system without regard to proper industrial training, demanding the performance of set tasks which are fixed without regard to the physical or mental powers of the convict, the placing of numbers of prisoners

[1] Des Causes ce la Recidivie.

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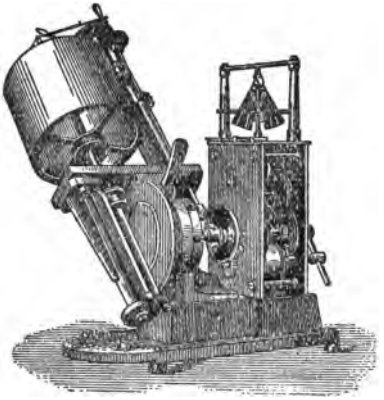

Fig. 4.—Ludwig's Kymographion.

Fig. 5.—Hipp-Chronoscope.

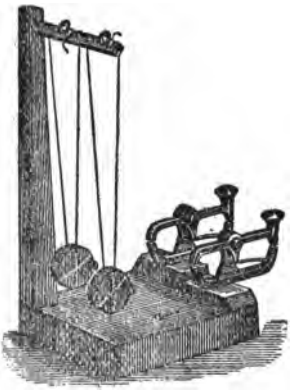

Fig. 6.—Vernier Chronoscope (Sanford.)

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in the same cell at night, united with a total want of educative, uplifting and refining influence, will make of any penitentiary a cess-pool of crime, into which some good may enter, but from which none can proceed. These conditions are aggravated by the unhappy disposition, only too apparent in a majority of the United States, to make of all penal institutions a part of a political spoils system which, in so far as it may result in placing men of low mentality and incorrect ideals in charge of criminals, is utterly and inexcusably vicious. All official deviations from the standards of honor and honesty are quickly noticed by the inmates of a penal institution, and where these men are in charge of officers who are no better than their wards all hope of general and permanent reform among the inmates is lost. These evils, however, are not peculiar to the penitentiary system, though existing there, no doubt, in a greater degree than elsewhere. But when found in reformatories they are even more harmful. The reformatory, however, when properly officered, offers an opportunity for individualization of punishment such as no penitentiary can afford.

The first efforts at reformation naturally begin with the first offense. Most civilized nations are now attempting to put into practice the maximum

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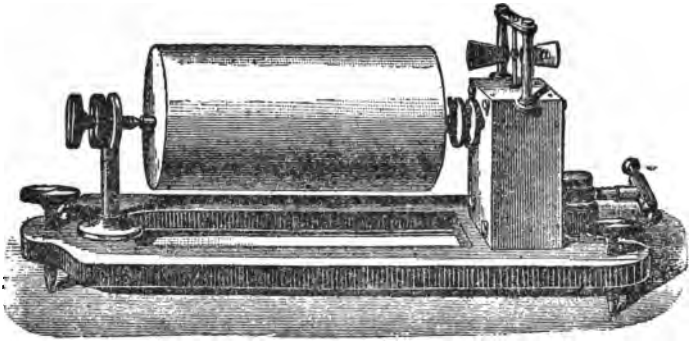

Fig. 7.—Small Polygraph.

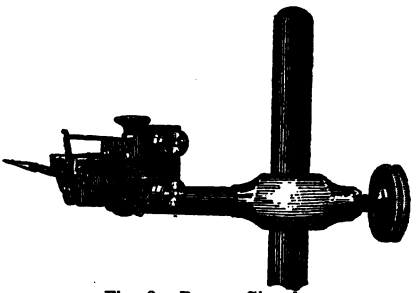

Fig. 8.—Deprez Signal.

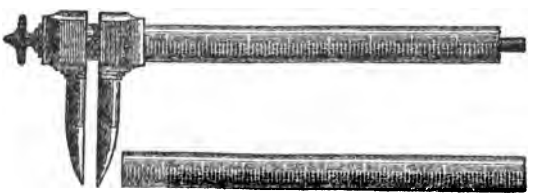

Fig. 9.—Æsthesiometer.

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of the Roman law, *moneat lex antequam puniat*—"let the law warn before it punishes." In the case of the first offender, without circumstances of aggravation, and especially if the culprit be a juvenile offender, he is released upon probation or parole, with bond, in some jurisdictions, and in other jurisdictions without bond, according to the gravity of the offense; the court admonishing him that any future misconduct within a given period will be requited by imprisonment. Such provisions with reference to minor offenses have been carried into the codes of England, Spain, Russia, Portugal, Denmark, New Zealand, Australia, Belgium, France, some of the Swiss cantons, and a majority of the United States. In most instances the parole or release upon probation amounts merely to a suspension of sentence, to be followed by ultimate discharge upon observance of the terms of the suspension. While the prisoner is at large he is under the surveillance of a probation officer or, in some States, the sheriff of the court, and is required to give, at stated intervals, a satisfactory account of his conduct. In some of the United States the system is known as the "court parole." The judges revoke the parole upon breach of the conditions, and the sentence is then carried into effect. Under this system reformation is often

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Fig. 10.—Algometer. (Cattell.)

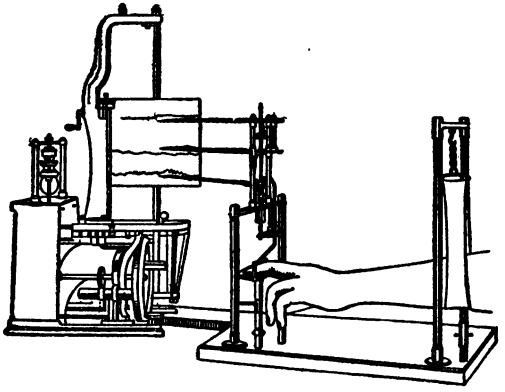

Fig. 11.—Psychograph. (Sommer.)

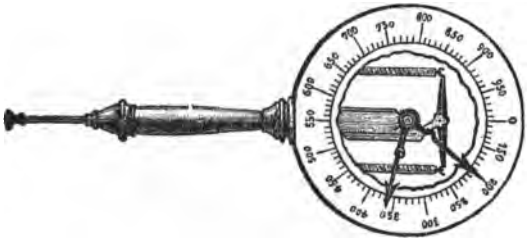

Fig. 12.—Sphygmometer. (Bloch.)

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accomplished without any imprisonment at all. When imprisonment is necessary, the confinement should be either in a reformatory or, in some cases, in an institution for the criminal insane. As Lombroso says, "the whole world is agreed upon one point: that among real or supposed criminals there are many who are insane."

Among the more depraved criminals there are very many whose confinement in such an institution would be better for society and for themselves than imprisonment in any reformatory or in the average penitentiary. Insanity is sometimes so hard to detect, because of its many elusive and varying types, that many persons reach the reformatories and penitentiaries only to become a menace to their associates and keepers as well as a danger to themselves. Unless courts and juries believe that insanity was so marked as to have been the sole cause of the unlawful act and that the accused was wholly irresponsible at the time, they are very apt to send the prisoner to an institution where his confinement is most likely to jeopardize the safety of others, and where the discipline is not arranged to suit such cases. If in all such cases of unquestioned guilt but very questionable mentality, a place of detention were provided for this most dangerous class, the courts

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Fig. 13.—Sphygmomanometer. (Basch.)

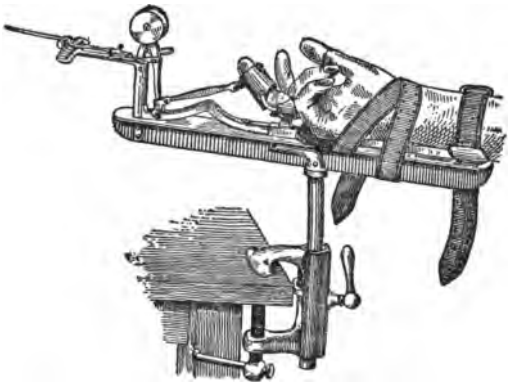

Fig. 14.—Spring Ergograph. (Binet and Vaschide.)

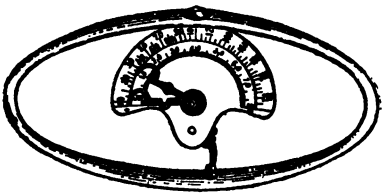

Fig. 15.—Dynamometer. (Collin.)

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would not be slow to make use of it, and acquittals upon the ground of insanity would be much less frequent than they are. However, such institutions, I believe, exist only in England and a very few of the United States. There are none at all upon the continent of Europe, unless they have been quite recently established.

On account of the frequency and the success of the plea of insanity as a defense to criminal prosecution, the American humorist, "Mark Twain," once proposed that insanity should by legislative act be declared a felony. But the end in view would be better subserved by permitting the court to convict notwithstanding insanity, and order the prisoner forthwith to be confined and treated in an asylum provided for the detention of insane persons who commit crimes. When the insanity is shown at a criminal trial, there is so much the greater reason for his close detention and treatment under the care of the State. All forms of insanity are sufficiently dangerous, but when the danger is clearly established by the actual commission of a crime, the State cannot justly abandon its responsibility by permitting its trial court to lose jurisdiction of the case for a single moment, and the court should proceed to enter judgment and pronounce sentence in accord-

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ance with the welfare and safety of society and the prisoner at the bar. Doubt as to a prisoner's mental or moral responsibility should not be permitted to authorize a discharge in any case. The best interests of society and of the individual in all cases demand the immediate detention and proper treatment of all persons who commit crime, and the duty to do so is as binding upon

Fig. 16.—Dyanometer. (Ulmann.)

Fig. 17.—Cephalometric Square.

Fig. 18.—Goniometer. (Topinard.)

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society as is the duty to quarantine and treat the victim of contagious disease.

But the new penology does not stop with a demand for the classification and segregation of prisoners upon the basis of sanity or insanity. It studies all the physical and psychical defects of man.

In the detection of defects in the sensory or motor faculties, in the discovery of neuroses and for the purpose of aiding in the observation and classification of stigmata of degeneracy, science now employs various instruments for the recording of precise data, among the most useful being the kymographion (Fig. 4), the chronoscope (Figs. 5 and 6), the polygraph (Fig. 7), the Deprez signal (Fig. 8), the æsthesiometer (Fig. 9), the aglometer (Fig. 10), the psychograph (Fig. 11), the sphygometer (Fig. 12), the sphygmomanometer (Fig. 13), the ergograph (Fig. 14), the dynamometer (Figs. 15 and 16), the cephalometric square (Fig. 17), the goniometer (Fig. 18), the calipers (Figs. 19, 20, 21, 22, 23 and 24), the glossodynamometer (Fig. 25), and the palatograph (Fig 26).

Science now requires a complete classification of the inmates of every reformatory with a view to proper segregation, training and treatment. I

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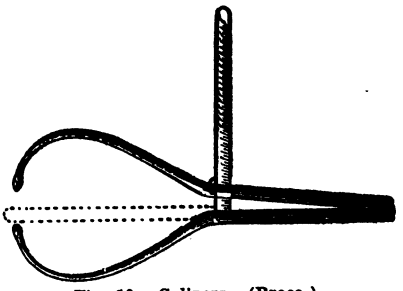

Fig. 19.—Calipers. (Broca.)

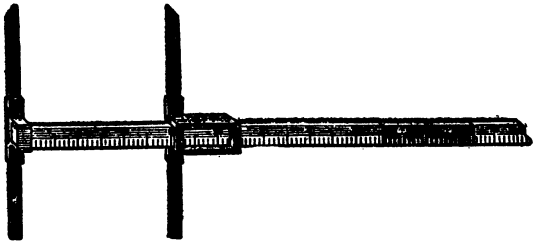

Fig. 20.—Calipers. (Topinard.)

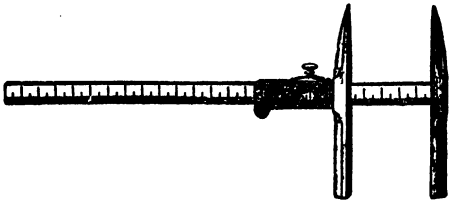

Fig. 21.—Sliding Calipers. (Topinard.)

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agree with Dr. C. A. Ellwood, Professor of Sociology in the University of Missouri, that "any classification of criminals in order to be scientific, must be a psychological classification;" although, as he very appropriately adds, this psychological classification should not ignore the biological element.

The principal classifications proposed by criminologists are well described in the following summary by Dr. G. Stanley Hall:[2]

"Ferri makes three great types of delinquents with two minor varieties. All have the common traits of impulsiveness of abnormal action with either absence or feebleness of resistance. These are as follows: (1) Criminals by birth or instinct with hereditary absence of moral sense, without feeling for the suffering of their victims, with cynicism, indifference, and absence of remorse afterward, and with improvidence of the consequence of their actions. (2) The insane criminal, a variety of the preceding class. In these cases there may be good conduct preceding the crime, but with a fixed idea of repulsion to it and with efforts to subdue it, and great fury in the accomplishment of the act itself. The victims may be chosen from among friends with no obvious motive, such as vengeance or cupidity. (3) The criminal of passion, personal or social,

[2] Psych. of Adolescence, vol. 1, p. 389.

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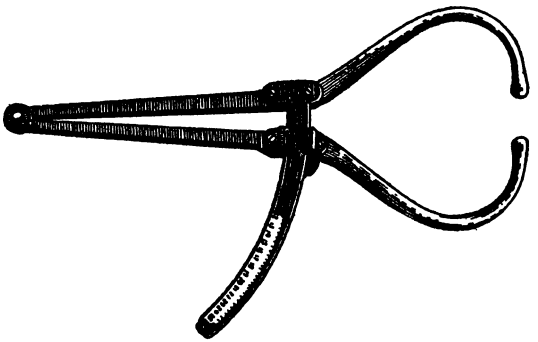

Fig. 22.—Calipers.

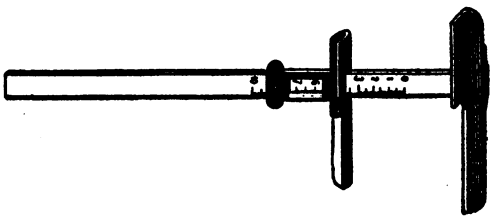

Fig. 23.—Small Caliper Rule.

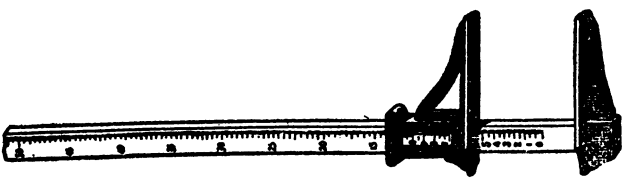

Fig. 24.—Large Caliper Rule.

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involving love, anger, honor, and followed often by a sincere and deep regret. (4) The occasional criminal, a variety of the passional, characterized by feebleness of the moral sense and with a constitution which makes him the victim of circumstances. (5) The habitual criminal, an intermediate type often developed from the occasional criminal, with the moral sense finally effaced, owing to an imperfect constitution or unfavorable environment.

"Lombroso finds two general types of criminals —first, those impelled by causes external to their own organization, whether occasional or habitual, and here includes those led to crime by passion. A second class comprises criminals by organic defects and includes: (I) Those with acquired defects, whether due to special diseases, paralysis, hysteria, or to common diseases like consumption, syphilis, or those caused by senility, drugs, alcohol, or those with an insane taint, monomania, melancholia, acquired epilepsy, etc. (II) Criminals by internal organic defect, and of these he makes four subdivisions: (1) Epileptic, degenerative, asymmetrical, those with obtuse touch and pain sense, color blind, lascivious, irascible, hyperreligious, delirious, impulsive, ferocious. (2) Moral imbeciles, often macrocephalic, without beard and with abnormalities of nose, ears, hair, etc., with a psychic character like that of epileptics, but less pronounced. (3) Criminals with innate psychotic traits, mattoids, idiots, cretins, monomaniacs, but not quite imbeciles. (4) Born

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criminals, thieves, assaulters, violators, etc., each with their own peculiar traits.

"Marro's categories are three: (1) Criminals

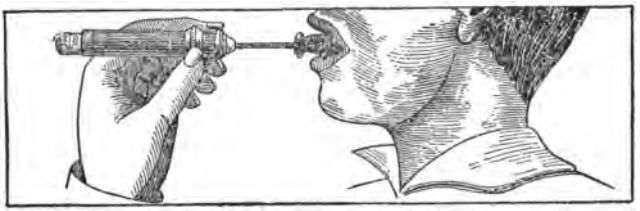

Fig. 25.—Glossodynamometer. (Féré.)

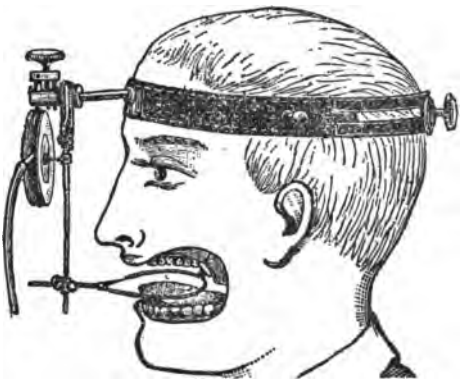

Fig. 26.—Palatograph. (Weeks.)

by external causation, whether predisposing or determining. These are usually lazy, quarrelsome, and perhaps vagabonds, neuropathic, pre-

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cocious, consumptive or alcoholic, with few marks of somatic degeneration, with no grave lesions of sensation or motility. They are impulsive and affectionate, with average intellect, may be very religious, and are usually curable. (2) Criminals in whom external or internal causes counterbalance, many recidival thieves, participants in graver crimes, with bad heredity, cupidity of wealth and pleasure, frequent deformities of skull and face, rickety, with frequent alternations of sensibility and intelligence, now normal and now defective, with precocious malice, feeble will, and doubtful corrigibility. (3) Criminals in whom internal causes predominate markedly over external: (a) where the internal causes are hereditary, prone to crimes of luxury, incendiarism, wounds without premeditation, crimes in unusual age or youth, with special susceptibility to seasonal changes and to momentary impulses, often bland or sanguine in temperament, with signs of arrested development in body, obtuse senses, dementia, ignorance, and rarely curable; (b) criminals in whom the predominant internal causation is morbid, thieves committing rapine and depredation, murder with premeditation, of delinquent parentage, addicted to alcoholism, fondness for orgy and vengeance, with physical development usually normal, but the facial bones excessively large, lesions and scars not uncommon, fierce physiognomy, tattooing, deformities of the skull, exaggerated reflexes, low sensibility and a high degree of tolerance for alcohol,

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intelligence perhaps normal but moral sense degraded, suicidal tendencies, cynicism, and usually incorrigibility; (c) criminals who are such by coincidence of internal causes and those morbidly acquired, murderers and assassins, drunkards, epileptics, prone to exalted and rapt states, mental lesions, etc., these constituting the most dangerous and incurable types of all."

August Drähms, in his book on "The Criminal," proposes the simpler classification of (1) instinctive criminals, (2) habitual criminals, and (3) single offenders. This classification is ably supported by Dr. Ellwood. A more simple classification would be (1) social and (2) anti-social criminals. Although crime is always an anti-social act, the criminal is not always anti-social in his nature. Under the heading of anti-social criminals could be grouped all instinctive or born criminals and the various subdivisions of the more depraved and dangerous class of offenders. The other classes, not being anti-social in their nature, would include all who are more susceptible of amendment and who are more responsive to reformatory treatment. It should never be forgotten, however, that the human being is always unique, and under varying conditions we shall find that men will not always remain in the classes

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in which they are so astutely placed. Criminals in prison cannot be catalogued and placed on a shelf like books in a library. They will be found, in most cases, to grow either better or worse according to treatment; but the effectiveness of the treatment will usually be governed by the accuracy of the diagnosis.

That the reformatory system has succeeded when properly tested is beyond cavil. It is no longer necessary to cite statistics in support of the fact. It is admitted. But the new penology, having penetrated the penitentiary walls, is going farther and is striking deeper. It is affecting, and must continue to affect in an ever increasing degree, the forms of criminal procedure, the judgments of courts and the concepts of penal justice. For it reads the laws of nature; its conclusions are based upon a study of the body and the mind of man, as well as of the social conditions which surround him, and its judgments are "not of the letter, but of the spirit; for the letter killeth, but the spirit giveth life."

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